

Syllabus

IN THE MATTER OF

NATIONAL PUBLICITY BUREAU, INC., TRADING IN ITS OWN NAME AND AS NATIONAL PUBLICITY BUREAU AND ROGERS SILVERWARE DISTRIBUTORS, AND HUGH J. WANKE, INDIVIDUALLY AND AS PRESIDENT OF NATIONAL PUBLICITY BUREAU, INC., TRADING AS ROGERS SILVERWARE DISTRIBUTORS

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

Docket 2908. Complaint, Aug. 21, 1936—Decision, Mar. 1, 1939

Where an individual engaged, under trade name "National Publicity Bureau," in purchase of silverplated ware from Wm. A. Rogers at Oneida, N. Y., and under trade name "Rogers Silverware Distributors," in sale of trading cards redeemable in such silverplated ware, to retail merchants for distribution to their customers, and in selling said cards at \$1.50 a 1,000, with dealer customers under contracts entered into with him by them in which they agreed to cooperate with Rogers Silverware Distributors in distribution of Wm. A. Rogers Silverware for advertising purposes—

- (a) Represented, directly and by implication, that said Rogers Silverware Distributors trading cards were a method of advertising used by Wm. A. Rogers, maker of silverware, facts being he had no connection, either directly or through such Rogers Silverware Distributors, with Wm. A. Rogers, silverware maker, except as a customer for its wares:
- (b) Represented that said Rogers Silverware Distributors, for cooperation given by the merchant in distributing Wm. A. Rogers Silverware, would furnish him gratis display set of 26 pieces of said ware with the distribution of 25,000 cards, facts being he did not furnish such a set on such condition, but claimed that, under contract, dealer was not entitled to set until he had distributed cards for 6 months and had completely distributed that number of cards, which interpretation was not made clear and necessary by contract, dealer signatories to which expected to receive display set along with delivery of cards bought;
- (c) Represented that said Rogers Silverware Distributors in consideration of publicity and cooperation extended during life of agreement, would pay merchant buying cards cash refund at rate of \$1.50 for each and every 1,000 cards redeemed, facts being he did not pay such refund but claimed that dealer was not entitled to any refund until he had distributed cards for period of 6 months under contract, which did not make clear such interpretation, and dealer signatories of which expected refund to be made whenever thousand of such cards had been redeemed;
- (d) Represented that said Silverware Distributors would redeem said trading cards in Wm. A. Rogers Silverware for customers of dealers without cost to such customers, facts being he did not thus redeem said trading cards, but required customers to send in an amount of money therewith which approximated cost of the silverware to such Rogers Silverware Distributors; and

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- (e) Represented, through use of said name Rogers Silverware Distributors in and as a part of his trade name, that he was directly connected with, or a part of, the company which made Wm. A. Rogers Silverware, and failed to remove implication of such direct connection through use on his contract of words "We have no connections with any other companies," which did not suffice for such purpose;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and false belief that said representations were true, and to induce number of retail merchants to buy substantial quantity of said trading cards which, lacking such erroneous and false belief, they would not purchase, and, as direct consequence of such erroneous and false belief induced by such representations, to cause number of purchasing public to buy substantial quantities of said cards, with result of thereby diverting trade unfairly to him from his competitors who truthfully advertise and represent their said cards; to the substantial injury of competitors in commerce:

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

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

Mr. John Darsey and *Mr. Earl J. Kolb* for the Commission.

Mr. Leon H. A. Pierson, of Baltimore, Md., for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that the National Publicity Bureau, Inc., a corporation trading under its own name and as National Publicity Bureau and Rogers Silverware Distributors, and Hugh J. Wanke, individually and as president of National Publicity Bureau, Inc., trading as Rogers Silverware Distributors, hereinafter designated as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in this respect as follows:

PARAGRAPH 1. Respondent, National Publicity Bureau, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, under articles of organization in the year 1927, with its principal office and place of business in the Rollins Building in the city of Baltimore in the said State.

Respondent National Publicity Bureau, Inc., in its own name and under the trade names National Publicity Bureau and Rogers Silverware Distributors, is now and has been for more than 1 year last past, engaged in the business of selling and distributing advertising

cards or coupons redeemable in silverware, in commerce between and among the several States of the United States and in the District of Columbia.

Respondent Hugh J. Wanke is an individual with his principal office and place of business in the Rollins Building, in the city of Baltimore in the State of Maryland, and is the president of and owns a majority of the stock in the respondent National Publicity Bureau, Inc., and controls and directs its practices and policies, and is now, and has been for more than 1 year last past, through the said respondent National Publicity Bureau, Inc., and under the trade name Rogers Silverware Distributors, engaged in the business of selling and distributing advertising cards or coupons redeemable in silverware in commerce between and among the several States of the United States and in the District of Columbia.

Said respondents in the course and conduct of their business as aforesaid, cooperated with each other and have acted together during all the times herein mentioned and in doing the acts and things herein alleged. In the course and conduct of their business the respondents cause said advertising cards or coupons redeemable in silverware, when sold, and the silverware used from the redemption of such advertising cards and coupons, when said cards or coupons are redeemed, to be transported from their principal place of business in the city of Baltimore, State of Maryland, to the purchasers of said cards or coupons and to the persons sending in said cards or coupons for redemption located in the several States of the United States other than the State of Maryland and in the District of Columbia. Respondents now maintain a constant current of trade in said products sold and distributed by them in commerce between and among the several States of the United States and in the District of Columbia.

The respondents are in substantial competition in commerce between and among the several States of the United States and in the District of Columbia with individuals, partnerships, and corporations, who do not use the acts, practices, and methods used by the respondents as hereinafter alleged, engaged in the business of selling and distributing sales-promotion plans, advertising cards or coupons redeemable in silverware or other merchandise, and silverware in said commerce.

PAR. 2. In the course of the operation of their business, it has been and is the practice of respondents to offer for sale and sell advertising cards or coupons as described in paragraph 1 hereof, through the personal solicitation of local retail and wholesale dealers in and through the various States of the United States. The said adver-

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tising cards or coupons are offered for sale and sold by respondents to such local retail and wholesale dealers to be distributed as a stimulation of their business, among their customers, according to the amount of merchandise sold them by such retail and wholesale dealers. Forms of contracts, specimen advertising cards and coupons, and other advertising matter are used in the solicitation of such retail and wholesale dealers.

PAR. 3. In the course and conduct of their business as aforesaid, respondents represent and imply that they are representatives of, or connected with, a specified concern manufacturing silverware, to wit: William A. Rogers, or William A. Rogers, Ltd.; that a plan, including the sale to the dealer of the advertising cards or coupons, offered by the respondents, has been adopted by the specified silverware manufacturer as an advertising campaign for the purpose of introducing and advertising its said products, in lieu of the advertising theretofore conducted through magazines, newspapers, and other periodicals, and in the expectation that by introducing a high-grade silverware directly into the homes, the public appreciation and the market therefor would be greatly increased, and that the business of a dealer participating in the plan would likewise be greatly increased; and that the silverware used in the redemption of the cards or coupons is of a high and guaranteed quality and the well known and genuine William A. Rogers silverware. In truth and in fact the said respondents were not and are not representatives of or connected in any capacity with any concern manufacturing silverware and the plan offered by the respondents is not an advertising campaign adopted in lieu of advertising theretofore conducted through magazines, newspapers, and other periodicals and the silverware with which the said respondents redeem said cards or coupons was not and is not of a high quality, and is not the well known and genuine William A. Rogers silverware, but is a low quality plated ware greatly inferior to and of much less value than the genuine William A. Rogers silverware.

In the course and conduct of their business as aforesaid, the respondents represent and imply that the prices at which the so-called advertising cards or coupons are sold to the dealers are merely sufficient to cover the cost of printing the cards with the name of the individual dealer thereon, and that the charge to persons sending in cards or coupons for redemption is merely to cover the cost of the package in which the silverware is shipped and the delivery thereof, and that the silverware used in redemption of said cards or coupons is donated by the manufacturer. In truth and in fact the cost of printing said cards or coupons is much less than the price charged

therefor and the silverware is not donated by the manufacturers thereof, but is purchased by the respondents, and the sum received by the respondents from persons redeeming said cards or coupons, under their plan, is more than the regular retail price for the grade of silverware used in making redemption.

Respondents, in many instances, represent to dealers that they redeem the advertising cards or coupons without any charge at all to the persons presenting said cards or coupons for redemption. In truth and in fact the persons seeking to redeem said cards or coupons are compelled to and do pay to the respondents certain specified sums dependent upon the kind and character of silverware selected. Respondents, in many instances, represent to a prospective purchaser of said advertising cards or coupons that such dealer is the only one to whom the "plan" will be sold in the particular community when in truth and in fact the respondents do not restrict the sale of the plan to the specified dealer to whom the representation is made, but sell the plan to other dealers in that particular community. Respondents represent to prospective purchasers of said cards or coupons used in connection with said "plan," that if a specified number of advertising cards or coupons is purchased, the respondents will furnish to such dealers a 26-piece set of silverware to be used by the dealer to whom furnished for exhibition purposes during the "advertising campaign," and which is to become the property of the dealer to whom furnished at the conclusion of the "campaign" without cost to such dealer. In truth and in fact, in many instances, where a dealer has purchased the specified number of advertising cards or coupons and the respondents have promised to deliver a 26-piece set of silverware, they have failed and refused to do so.

PAR. 4. The word "Rogers" and the terms "Rogers Silverware" and "Genuine Rogers Silverware" and the names "Wm. A. Rogers" and "William A. Rogers, Ltd." have long been used by the manufacturers thereof to designate, and are understood by wholesale and retail dealers and the public generally to mean, a high quality, expensive silverware as distinguished from a low quality, inexpensive plated silverware; and the use of the word "Rogers" in the trade name and the terms "Rogers Silverware" and "Genuine Rogers Silverware" by the respondents in describing the silverware to be used in redeeming said cards or coupons, and of the representations that the respondents are representatives of William A. Rogers, Ltd., misleads and deceives many wholesale and retail dealers and causes them to become a party to said "plan" and to purchase said cards or coupons in the mistaken belief that the silverware used for redemption and the 26-piece set furnished the dealers is the high quality, expensive

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silverware long known to the public generally as "Rogers," "Rogers Silverware," or "Genuine Rogers Silverware." In truth and in fact the silverware used for redemption of said cards or coupons is manufactured by the company which manufactures the high quality, expensive silverware known as "Rogers," "Rogers Silverware," or "Genuine Rogers Silverware," but is a low quality, inexpensive plated silverware and not comparable with, or of a similar quality to the silverware long known and sold as "Rogers," "Rogers Silverware," or "Genuine Rogers Silverware." The grade of silverware used for redemption of said cards or coupons has never been known or sold as "Rogers," "Rogers Silverware," or "Genuine Rogers Silverware."

PAR. 5. In the contract executed by the said respondents and a dealer who has agreed to participate in the "plan" is a provision whereby the respondents agree to refund to such a dealer a sum certain in money for each and every 1,000 cards issued by the dealer and redeemed by the respondents. This payment to such a dealer, if made, would permit the dealer to participate in the "plan" without cost. The contract provides that the dealer is to participate for a period of 6 months and the contract further provides, in effect, that the dealer's initial order must not exceed a 90-day supply. The respondents engage in the general practice of not making refunds to participating dealers in accordance with the terms of their agreements with said dealers. Respondents' policy is to fail and refuse to make such refunds and when a demand is made for such a refund, on some pretext or another, to contend that the dealer has breached the contract and that the respondents are, therefore, relieved from their obligation to make the refund as provided in the contract. The principal contention of the respondents, in this connection, is that the dealer has breached the contract by placing an initial order for cards or coupons in excess of a 90-days supply. In many instances dealers do, because of the aforesaid false and misleading representations, and more especially because of the offer of the free 26-piece set of silverware, place an initial order for cards or coupons in excess of a 90-day supply. In such instances the "breach" of the contract is induced by the aforesaid false and misleading representations of the respondents and any of the rights claimed by the respondents as a result thereof have been acquired by the respondents through an overreaching of such dealers and are unlawful and are not binding on the dealers. In many instances the failure of the dealer to dispose of the initial supply of cards or coupons within the 90-day period is the result of the failure of the respondents to redeem the cards or coupons placed in the hands of customers by the dealers in silverware of the quality promised by the respondents, which causes less demand

among the customers of the dealer for said cards or coupons than there would have been but for said failure of the respondents to redeem said cards or coupons in silverware of the quality promised. This causes the initial order of cards or coupons to exceed a 90-day supply, when they would have been disposed of within 90 days had the respondents not misrepresented the silverware.

The purported manufacturers' plan of advertising as submitted by the respondents to said dealers is simply a scheme, by the means and in the manner hereinabove alleged, on the part of the respondents, unlawfully and fraudulently to convert to their own use the difference, which is approximately \$3 per thousand, between the cost of printing said cards or coupons, the purpose for which respondents purportedly collect the money from dealers, and the amount of money paid to the respondents per thousand cards or coupons by the participating dealers.

PAR. 6. The acts, practices, and methods of the respondents, as hereinabove alleged, have had and do have the tendency and capacity to and do mislead and deceive a substantial portion of wholesale and retail dealers who are prospective purchasers of said cards or coupons, and have caused and do cause many such prospective purchasers erroneously to believe that the false and fraudulent representations and implications, as hereinabove alleged, are true and cause a substantial portion of such prospective purchasers, because of such erroneous belief, to purchase respondents' said cards or coupons and to become participants in said plan, thereby diverting trade to respondents from their competitors in said commerce who do not use the acts, practices, and methods used by the respondents, to the substantial injury of said competitors in said commerce and to the injury of the public.

PAR. 7. The acts, practices and methods of the respondents, as hereinabove alleged, are all to the prejudice of the public and respondents' said 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 (U. S. Code, title 15, sec. 45), the Federal Trade Commission, on August 21, 1936, issued, and on August 24, 1936, served, its complaint in this proceeding upon Hugh J. Wanke, trading as National Publicity Bureau and as Rogers Silverware Distributors, charging him

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with the use of unfair methods of competition in commerce in violation of the provisions of said act; and respondent entered his appearance and filed his answer herein. Thereafter, hearings were held and testimony and other evidence were introduced by John Darsey, attorney for the Commission, in support of the allegations of the complaint, and by Leon H. A. Pierson, attorney for the respondent, in opposition to the allegations of the complaint, before John W. Addison, an examiner of the Commission theretofore duly appointed by it. Thereupon, this proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint, and the Commission, having duly considered said complaint, answer, testimony, and other evidence, and brief, 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. Hugh J. Wanke, 601 Phoenix Building, 4 East Redwood Street, Baltimore, Md., is an individual trading at this address as Rogers Silverware Distributors and as National Publicity Bureau. As National Publicity Bureau he buys silverplated ware from Wm. A. Rogers, at Oneida, N. Y. As Rogers Silverware Distributors he is engaged in the business of selling trading cards redeemable in Wm. A. Rogers silverplated ware, to retail dealers for distribution to their customers. He sells the cards at \$4.50 per thousand, and his annual sales of them amount to from \$8,000 to \$10,000. He enters into contracts with his dealer customers, in the form reproduced on page 3 hereof, for the purchase of the cards, in which contracts they agree to cooperate with Rogers Silverware Distributors in the distribution of Wm. A. Rogers silverware for advertising purposes.

The contract form used is so framed as to emphasize the name "Rogers Silverware Distributors" and contains the following:

DISPLAY SET OF 26-pieces of Wm. A. Rogers Silverware furnished gratis with distribution of 25,000 cards.

To Be Displayed Attractively for Our Mutual Benefit for a Period of at Least 30 Days—

and

GUARANTEED CASH REFUND

In consideration of publicity and co-operation extended during the life of this agreement the *Rogers Silverware Distributors* agrees to pay us a cash refund at the rate of \$4.50 for each and every thousand cards redeemed.

PAR. 2. National Publicity Bureau, Inc., was a Maryland corporation controlled by Wanke, which from 1927 to 1933 was used to carry on the sale of said cards. It was dissolved about 1933, but Wanke still uses the trade name "National Publicity Bureau" in the purchase of said silverware.

PAR. 3. Wanke sells said cards to dealers in States other than the State of Maryland, including Pennsylvania, Ohio, West Virginia, and Michigan, and ships them in interstate commerce from Maryland through and into these other States and causes them to be there delivered to the buyers.

PAR. 4. Wanke, in the course and conduct of his business of selling trading cards, is in competition in interstate commerce with other individuals, partnerships, and corporations also engaged in selling in commerce among the several States cards or coupons redeemable in silverplated ware.

PAR. 5. Wanke, to promote the sale of said cards, represents:

(a) Directly and by implication that Rogers Silverware Distributors' trading cards are a method of advertising used by Wm. A. Rogers, maker of silverware.

(b) That Rogers Silverware Distributors, for cooperation given by the merchant in distributing Wm. A. Rogers silverware, will furnish him gratis a display set of 26 pieces of Wm. A. Rogers silverware with the distribution of 25,000 cards.

(c) That Rogers Silverware Distributors, in consideration of publicity and cooperation extended during the life of the agreement, will pay the merchant buying the cards a cash refund at the rate of \$4.50 (the cost of the cards to the merchant) for each and every thousand cards redeemed.

(d) That Rogers Silverware Distributors will redeem said trading cards in Wm. A. Rogers silverware for the customers of the dealers without cost to such customers.

PAR. 6. In truth and in fact:

(a) Rogers Silverware Distributors' trading cards are not a method of advertising used by Wm. A. Rogers, maker of silverware. Wanke has no connection, either directly or through Rogers Silverware Distributors, with Wm. A. Rogers, silverware maker, except as a customer of Wm. A. Rogers for its silverware.

(b) Wanke does not furnish gratis to the dealer a display set of 26 pieces of Wm. A. Rogers silverware for use with the distribution of 25,000 cards, but claims that, under the contract, the dealer is not entitled to the display set until the dealer has distributed the cards for 6 months and has completely distributed 25,000 cards.

The contracts fail to make such interpretation clear and necessary, and the dealers signing them expect to receive the display set along with the delivery of the cards bought.

(c) Wanke does not pay the merchant buying cards a cash refund at the rate of \$4.50 per thousand for each and every thousand cards redeemed, but claims that under the contract the dealer is not entitled to any refund until he has distributed the cards for a period of 6 months. The contracts do not make it clear that no refunds are to be made for 6 months, and dealers signing them expect refund to be made whenever a thousand of these cards have been redeemed.

(d) Rogers Silverware Distributors does not redeem its trading cards in Wm. A. Rogers Silverware without cost to the customers of the dealers who send them in for redemption, but requires these customers to send in an amount of money with the cards which approximates the cost of the silverware to Rogers Silverware Distributors.

PAR. 7. The Commission further finds from examination of the contract used by this respondent and the testimony of witnesses that the use by respondent of the words "Rogers Silverware" in and as part of his trade name is a representation that he is directly connected with or is a part of the company which manufactures Wm. A. Rogers Silverware. The use of the words "We have no connections with any other companies" on respondent's contract is not sufficient to remove the implication of respondent's direct connection with such manufacturer.

PAR. 8. Each and all of the false and misleading statements made by respondent, as set forth above, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and false belief that said representations are true, and to induce a number of retail merchants to buy a substantial quantity of said trading cards, which they would not buy except for such erroneous and false belief. Further, said representations have the capacity and tendency, as a direct consequence of such erroneous and false belief, induced by the representations as set forth above, to cause a number of the purchasing public to buy substantial quantities of said trading cards, with the result that trade is diverted unfairly to respondent from his competitors who truthfully advertise and represent their trading cards, and substantial injury has been and is being done by respondent, Hugh J. Wanke, trading as Rogers Silverware Distributors, to his competitors in commerce among the several States of the United States and to the public.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found 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 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, the answer of the respondents, testimony, and other evidence taken before John W. Addison, an examiner of the Commission duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein by counsel for the Commission, and the Commission having made its findings as to the facts and conclusion that said respondent Hugh J. Wanke, individually and trading as National Publicity Bureau and Rogers Silverware Distributors, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Hugh J. Wanke, individually and trading as National Publicity Bureau and Rogers Silverware Distributors, or under any other name or names, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce as commerce is defined by the Federal Trade Commission Act, of silverware or sales-promotional plans including premium certificates, gift cards, or coupons redeemable in silverware or other articles of merchandise, do forthwith cease and desist from:

1. Representing, by use of the words "Rogers Silverware" in a corporate or trade name, or by statements or representations in advertising or in any other way, that the respondent has an interest in, forms a part of, or has any connection with the manufacturer of William A. Rogers Silverware; provided, however, that this order shall not be construed to in any way prohibit the respondent from dealing in William A. Rogers Silverware or other products.

2. Representing that premium certificates, gift cards, or other similar devices can be redeemed in silverware or other merchandise unless and until all the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with such offer and there is no deception as to the services or other actions to be performed or the price to be paid in connection with obtaining such silverware or other articles of merchandise.

3. Representing that the respondent will give a set of silverware or other merchandise free or will refund the sum of \$4.50 or any other sum to the purchaser of said premium certificates, gift cards, coupons, or other and similar devices on the redemption of a specified number of cards, certificates, or coupons unless such refund is actually made or such merchandise is given free, and if there are any conditions connected with such refund or gift of silverware, such conditions must be clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with such offer of free merchandise or refund in such a manner that there is no deception as to the terms of such conditions.

4. Representing that the respondent is conducting any special campaign or advertising campaign to introduce or advertise any article or articles of merchandise on behalf of the manufacturer of William A. Rogers Silverware or any other manufacturer or concern unless such a campaign is in fact being conducted at the instance of and on behalf of such manufacturer.

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.

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IN THE MATTER OF

WILLIAM H. PEARCE & COMPANY, WILLIAM H. PEARCE,
PHILIP S. SHASSIAN, AND E. E. BRAZELTONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3071. Complaint, Mar. 8, 1937—Decision, Mar. 1, 1939*

Where two individuals engaged in making, under and pursuant to patents, tops to replace open grates on gas ranges and providing smooth cooking surface similar to that of coal ranges, and in selling and distributing said tops to consumers through crews of canvassers making house-to-house solicitation and using advertising literature supplied or approved by them, and selling such tops at prices ranging from \$7.90 to \$9.90, as case might be—

Represented that every top was properly ventilated to insure proper combustion and that use thereof materially reduced gas bills and increased cooking capacity, cooking two to four articles with one burner, facts being, while one of two types made by them was properly ventilated to insure proper combustion, other type was not thus ventilated with more than one burner in use and, used with more than one burner lighted, emitted carbon monoxide in dangerous quantities, use of such tops materially decreased efficiency of gas used and tended to increase, rather than reduce, gas bills, and use of such tops with one burner lighted would not bring to a boil, or cook, any article placed on top except directly over lighted burner, though articles brought to boil over lighted burner might be kept warm on other parts of top while another article was being heated or boiled directly over such lighted burner;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and false belief that such representations were true, and to induce number of such public to buy substantial quantity of said tops which they would not otherwise buy and, as direct consequence of such belief thus induced, to cause number of such public to buy substantial quantities of their said merchandise, with result that trade was diverted unfairly to them from others likewise engaged in sale of stove tops for gas ranges, and who truthfully advertise and represent their merchandise; to the substantial injury of competitors in commerce:

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

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

Mr. Floyd O. Collins for the Commission.

Butler & Denny, of Philadelphia, Pa., for respondents.

COMPLAINT

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