

Syllabus.

IN THE MATTER OF
COLUMBIA REFINING CO.COMPLAINT, MODIFIED FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914¹*Docket 3517. Complaint, July 30, 1938—Decision, Mar. 27, 1939*

Where a corporation engaged, as wholesale dealer in motor oils and lubricants, in selling and distributing such products to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such products as aforesaid, and including dealers therein who are not refiners or manufacturers of such products and who sell and offer the same in commerce and do not in any way misrepresent that they are refiners or otherwise misrepresent their business or products—

Caused its corporate name, including word "Refining," to appear variously in its catalogs and other advertising matter and on its letterheads, invoices and other printed matter and on its containers, issued and circulated by it through the mails, transportation facilities and otherwise to its customers and prospective customers in the various other States and in said District, and represented thereby and otherwise to members of purchasing public, dealers and others, that it owned, controlled and operated a refinery, and that purchasers of its products were dealing directly with the manufacturer or refiner of such motor oils and lubricants, for purchase of which oils direct from refiner thereof there is a preference on part of substantial number among members of purchasing public, as securing them, in their belief, better prices, superior quality, and other advantages not ordinarily obtainable when purchasing through middlemen or others who are not actual refiners of such motor oils being purchased;

Facts being it did not manufacture or refine motor oils and lubricants advertised and sold by it as aforesaid, and did not own, operate, or control a refinery, and did not refine any of products which it sold, and said representations were false, misleading, and untrue;

With tendency and capacity to mislead and deceive substantial portion of purchasing public, and purchasers for resale, into erroneous belief that such representations were true, and with result, as direct consequence of such erroneous and mistaken belief induced by its advertising and representations, that number of consuming public and purchasers for resale bought substantial quantities of its said motor oils and lubricants, and trade was unfairly diverted to it from competitors likewise engaged in sale and distribution of such products and who truthfully advertise the same and their business status:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. John M. Russell for the Commission.

Chamberlin, Kafer, Wilds & Jube and *Mr. Frederick G. Weisser*, of New York City, for respondent.

¹ Original findings and order, issued as of January 18, 1939, not published.

Complaint

28 F. T. C.

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 Columbia Refining Co., a corporation, 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, Columbia Refining Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 4402 Twenty-third Street, Long Island City, in said State, and with an oil blending and grease compounding plant located at 1 Westside Avenue, Jersey City, N. J.

PAR. 2. Respondent has been for many years last past, and now is, engaged in business as a wholesale dealer in motor oils and lubricants and in the sale and distribution thereof in commerce between and among the various States of the United States and in District of Columbia. Respondent causes said products, when sold, to be transported from its principal place of business in the State of New York and its said branch in the State of New Jersey to the purchasers thereof located in States of the United States other than the States of New York and New Jersey, and in the District of Columbia.

In the course and conduct of its said business, respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations and with partnerships, firms, and individuals engaged in the sale and distribution of motor oils and lubricants, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its products, respondent causes its said corporate name, to wit: Columbia Refining Co. of New York, to appear variously in its catalogs and other advertising material and also on its letterheads, invoices, and other printed matter, all of which are issued and circulated by the respondent, through the United States mails and otherwise, to its customers and prospective customers located in the various States of the United States and in the District of Columbia.

Through the use of respondent's corporate name, in the manner hereinabove stated, and through other means, the respondent represents to members of the purchasing public that it owns, controls, and

operates a refinery and that purchasers of its products are dealing direct with the manufacturer or refiner of said products.

The products so advertised and sold in commerce, as herein described, by the respondent are not in fact manufactured or refined by the respondent. Respondent does not own, operate, or control a refinery and does not refine the products sold by it.

There are among the members of the purchasing public a substantial number who prefer to purchase motor oils directly from the refiner thereof, believing that in so doing they secure better prices, superior quality and other advantages not ordinarily obtainable when purchasing through middlemen or others who are not the actual refiners of the motor oils being purchased.

PAR. 4. There are dealers in motor oils and lubricants who are not refiners or manufacturers of said products and who sell and offer for sale their products in commerce between and among the various States of the United States, and who do not in any way misrepresent that they are refiners, or otherwise misrepresent their business or products.

The aforesaid acts, practices, and representations of the respondent in the course of its advertising, offering for sale, and selling of its products in commerce, as aforesaid, were and are calculated to have, and now have, a tendency and capacity to mislead and deceive a substantial part of the purchasing public into the erroneous belief that said representations are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's products, with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of selling and distributing motor oils and lubricants who truthfully advertise their respective products and their business status. In consequence thereof, injury has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The above alleged acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 30, 1938, issued and on August 1, 1938, served its complaint in this proceeding upon respond-

ent, Columbia Refining Co., a corporation, charging it with the use of unfair methods of competition and with unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

After the issuance and service of said complaint the respondent herein, on September 10, 1938, filed an answer in which it in part admitted and in part denied the allegations of the complaint. Subsequent thereto, on December 7, 1938, respondent, with the approval of the Commission, withdrew its original answer and filed herein a substitute answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter, and having found that the proceeding was in the interest of the public, made and entered its findings as to the facts and conclusion on January 18, 1939, and the Commission now being desirous of modifying its said findings, as is provided for under the provision of said Act of Congress, makes this its modified findings as to the facts and conclusion drawn therefrom.

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Columbia Refining Co. is a corporation duly organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 4402 Twenty-Third Street, Long Island City, N. Y., and with an oil blending and grease compounding plant located at 1 Westside Avenue, Jersey City, N. J. Respondent's grease compounding operations are not involved in this proceeding.

PAR. 2. Respondent has for many years last past, and now is, engaged in business as a wholesale dealer in motor oils and lubricants and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes said products, when sold, to be transported from its principal place of business in the State of New York and its said branch in the State of New Jersey to the purchasers thereof located in States of the United States other than the States of New York and New Jersey and in the District of Columbia.

In the course and conduct of its said business, respondent is now and has been at all times mentioned herein, in substantial competition with other corporations and with partnerships, firms, and in-

dividuals engaged in the sale and distribution of motor oils and lubricants in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its products, respondent causes its said corporate name, to wit, Columbia Refining Co. of New York, to appear variously in its catalogs and other advertising material, and also on its letterheads, invoices and other printed matter, and on its containers, all of which are issued and circulated by the respondent through the United States mails, transportation facilities and otherwise, to its customers and prospective customers located in the various States of the United States other than the States of New York and New Jersey and in the District of Columbia.

Through the use of the said corporate name in the manner hereinabove stated, and through other means, the respondent represents to the members of the purchasing public, to dealers and others, that it owns, controls, and operates a refinery, and that purchasers of its products are dealing directly with the manufacturer or refiner of such motor oils and lubricants.

PAR. 4. The representations made by the respondent with respect to its business as set out in paragraph 3 hereof, are false, misleading, and untrue. The motor oils and lubricants advertised and sold in commerce, as hereinbefore described, by the respondent, are not manufactured or refined by it. Respondent does not own, operate, or control a refinery and does not refine any of the products sold by it.

There are, among the members of the purchasing public, a substantial number who prefer to purchase motor oils directly from the refiner thereof, believing that in so doing they secure better prices, superior quality and other advantages not ordinarily obtainable when purchasing through middlemen or others who are not the actual refiners of the motor oils being purchased.

There are dealers in such motor oils and lubricants who are not refiners or manufacturers of said products and who sell and offer for sale their products in commerce between and among the various States of the United States and who do not in any way misrepresent that they are refiners or otherwise misrepresent their business or products.

PAR. 5. The aforesaid acts, practices, and representations of the respondent, in the course of its advertising, offering for sale and selling of its products in commerce as aforesaid, were and are calculated to have, and had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public and purchasers for resale into the erroneous belief that said representations

Order

28 F. T. C.

are true. As a direct result of such erroneous and mistaken belief induced by the advertising and representations of respondent, a number of the consuming public and purchasers for resale have purchased a substantial quantity of respondent's motor oils and lubricants with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of selling and distributing motor oils and lubricants who truthfully advertise their respective products and their business status.

CONCLUSION

The acts, practices and representations of the respondent, Columbia Refining Co., 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 and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

MODIFIED 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 fact set forth in the complaint and states that it waives all intervening procedure and further hearings as to said facts, and the Commission, on January 18, 1939, having made its findings as to the facts and conclusion that said respondent had violated the provisions of the Federal Trade Commission Act, and having issued its order to cease, and the Commission having on this date modified its said findings as to the facts and now being desirous of modifying its order to cease and desist so as to conform with its said modified findings as to the facts and conclusion, and being advised in the premises.

It is ordered, That the order to cease and desist issued on January 18, 1939, be, and the same is hereby, modified to read as follows:

It is ordered, That the respondent, Columbia Refining Co., its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of its motor oils and lubricants in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing through the use of the word "Refining" or any word or term of similar import and meaning in its corporate name, cata-

1265

Order

logs, advertising material, or in any other manner or through any means or device, that it is a refiner or manufacturer of motor oils and lubricants (other than greases) until and unless it owns and operates or directly and absolutely controls a refinery or plant wherein such motor oils and lubricants are manufactured or refined by it.

It is further ordered, That the respondent shall, within 60 days after 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
TRAFFIC INSPECTORS TRAINING CORPORATION AND
FRED J. KAVANAGH AND CHARLES VAN BUREN

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

Docket 3562. Complaint, Aug. 29, 1938—Decision, Mar. 27, 1939

Where a corporation and two individuals, who were general officers and principal stockholders thereof and jointly managed, controlled, and directed its policies and operation, engaged in sale and distribution in commerce among States of correspondence course of study and instruction to prepare students for positions as traffic inspectors or checkers, in substantial competition with others engaged in sale and distribution of similar correspondence courses in commerce and in District of Columbia, and including many who do not in any manner use misrepresentations in connection with sale and distribution of their courses; through newspaper advertisements, circulars, and other printed matter circulated to general public throughout the United States, and through verbal statements made by their agents and solicitors—

- (a) Represented "INSPECTORS NEEDED \$150-\$175 Per Month," and "Trained men and women are needed constantly as Railroad, Electric Railway, Streetcar, and Busline Passenger Traffic Inspectors" and that such occupation or "transportation" offered steady employment at high salaries, with opportunity to travel or stay near home, and opportunity for "well-paid position" in "new and uncrowded field";

Facts being there was no such demand, which exceeded supply of trained and experienced inspectors, transportation companies will not employ those who have theoretical knowledge only and no practical experience, such employment has been going on for 50 years and field is not new and does not offer well-paid positions or steady or permanent work or opportunity to remain in given locality for any length of time, or choice of locations, and traffic inspectors do not earn salaries as above set forth, but are compensated, usually, on per diem basis;

- (b) Made many representations as to guaranteeing and securing positions, including statements, in many instances, to prospective purchasers, that there was great demand on said corporation by railroad companies for its graduates, and that they had connections with a large number of such companies and were, therefore, in a position to place graduates without difficulty or delay, and that women graduates could be placed readily with any such company, and other statements of similar import;

Facts being there was no such demand, few, if any, individuals who completed said course found employment as such inspectors, they had no connection whatever with any railroad or other carrier of passengers, and could not and did not fulfill promises and guarantees made to students with respect to employment, and many passenger carriers do not employ women as such inspectors; and