

Syllabus

IN THE MATTER OF

LAKE ERIE CHEMICAL COMPANY, DOING BUSINESS AS
U. S. ORDNANCE ENGINEERS, INC., AND U. S. ORDNANCE ENGINEERS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AS EXTENDED BY SEC. 4 OF AN ACT OF CONGRESS APPROVED APR. 10, 1918

Docket 2484. Complaint, June 29, 1935—Decision, June 14, 1939

Where two corporations engaged, as case might be and as more fully below set forth, in manufacture, sale, and offer for sale of warfare chemicals, ordnance, munitions, and kindred products, to prospective purchasers and purchasers throughout the several States and the District of Columbia, and in foreign countries, namely—

I. Corporation which was and had been thus engaged for a number of years under name Lake Erie Chemical Co., and which, in the course and conduct of its said business, and as continuously thus engaged in manufacture and sale of warfare chemicals, ordnance, munitions, etc., had from time to time sold such products to the United States Government and had been recipient of information relating to ordnance, munitions, and warfare chemical products, thus, or otherwise disseminated incident to contract bids and to purchase of such materials as the War Department or United States Army purchases from manufacturers from time to time; and

II. Company, which the president of said corporation and others of its managing officials thereafter organized under corporate name U. S. Ordnance Engineers, Inc., and authorized to engage in offer and sale of products of said corporation to prospective purchasers and purchasers in foreign countries and for sale and distribution in export trade from the United States, and voting stock of which was owned, with few exceptions, by those who were also owners of voting stock of said corporation, and which had in common with latter two of its five directors and same president and treasurer, and was located in same city and at same address, had no offices outside of said city, employed New York selling representative on a commission basis with New York office as its exclusive selling representative in South and Central American countries, and who was authorized to and did make use of said company's name, namely, U. S. Ordnance Engineers, Inc., on the door of his offices and in the telephone listing and otherwise, and which, furthermore, as thus organized, was engaged in export business of offering or selling warfare chemicals, ordnance, munitions, and kindred products, made, primarily, by said corporation, to prospective purchasers and purchasers in foreign countries, and also in maintaining and selling certain engineering and construction service for foreign governments, and service involving instruction in military and civil tactics; In jointly advertising, offering, selling, and exporting in foreign commerce and export trade from the United States to foreign countries, the aforesaid products, and in advertising the same through catalogs which contained 22 separate pages of advertising statements, illustrations, and representations

referring to their products, and which they caused to be made up and circulated and distributed among the prospective foreign customers for such products, including all customers located in foreign countries who had been customers of said corporation first referred to, and including, chiefly, products made by said corporation, and in which catalogs, as made up by them, emphasizing the importance of military experience in the manufacture of such materials as of the utmost importance, and their personnel, equipment, efforts to conform as closely as possible to United States Army specifications and standards, etc., were displayed and set forth—

(1) Name and address of said U. S. Ordnance Engineers, Inc., on the front cover, together with numerous such references as "U. S. ORDNANCE ENGINEERS, Incorporated Successors in Business to the Lake Erie Chemical Company," together with address and cable address and trade mark of said corporation, depicting eagle bearing in his talons aerial projectile and which it employed on its stationery, letterheads, and envelopes;

(2) Matter featuring and depicting officers of such company in their official military dress or uniform of the United States Army, and setting forth, along with statements of their experience and qualifications, their positions in the Reserve Corps; notwithstanding fact established policy and practice of War and Navy Departments is opposed to use in any way of official Government military or naval titles, uniforms, or insignia in connection with promotion of private commercial enterprise by military or naval officers, reserve or otherwise, or by any private individual, and policy and practice of said Departments is to prohibit and prevent use of official military titles, uniforms, or insignia in any way connected therewith, or with Army or Navy, in connection with any commercial or non-Governmental enterprise;

(3) Facsimile reproductions of letters of recommendation referring to said company's aforesaid president and vice president and their standing and military service, over signatures of various generals as Chief of Chemical Warfare Service, Chief of Staff, Army of Occupation, Major General commanding the First Army Corps, and the Chief of the Militia Bureau;

(4) Reduced photographs of 24 checks on the Treasurer of the United States to the order of said corporation, together with statements "SUPPLIERS OF FUZES, CHEMICALS AND GAS PROTECTION EQUIPMENT TO THE UNITED STATES GOVERNMENT" and "Remittances from the United States Government during one month for orders filled";

(5) References, in connection with description of their various products therein offered, to utilization of the experimental, development, and test work and experience of the Ordnance Department and Chemical Warfare Service of the United States Army, and to the vast sums expended on experimental and development work by such branches of the Army, along with statement of strictest possible conformance to Army specifications in order "to take advantage" of such "rich store of experience," notwithstanding fact information incident to such expenditures on experimental and development work is, for the most part, retained in the confidential files of the War Department and not available either to them or their competitors;

(6) Numerous references to Army specifications and standards and said branches of the service in connection with their said products, notwithstanding fact their said products were not "standard," and information,

including plans and specifications supplied for so-called "standard" ordnance, munitions and warfare chemical products to a manufacturer, is, as a rule, supplied only for purpose of production for the United States Government by such manufacturer; and

(7) Reproduction of official test report and crater effect of demolition bomb, together with reference to Ordnance Department of the Army, and of official photographs taken by the Navy and by the Army Chemical Warfare Service, together with statements to that effect, notwithstanding fact bomb referred to was not used by the Government, chart or graph appearing in connection with photograph as report of test on cylindrical type was supplied with proviso that it was not to be used for advertising or promotion purposes, and depictions of projectiles and fuzes with Government identification marks thereon placed only on "standard" products used by the United States Government, notwithstanding fact products sold did not bear such marking and such products were not "standard" products or equipment used by Army or Navy;

Represented and implied, through use of such corporate name, U. S. Ordnance Engineers, Inc., and of such various references and depictions as above set forth and indicated in conjunction therewith, that said corporation and said company had such official, semiofficial or close relationship with the United States Government, through its Army Ordnance Department and Chemical Warfare Service, as to afford said U. S. Ordnance Engineers, Inc., access to and use of all information and experience, including experimental and development work of said military subdivisions relating to warfare products and to Government standards and specifications therefor, and that said U. S. Ordnance Engineers, Inc., was favored and especially fitted by such relationship to supply purchasers with warfare ordnance, munitions, chemicals, and related products, and that such products conformed to Government standards and were identical or nearly identical with those used by the Government, and that said U. S. Ordnance Engineers, Inc., was the successor in business to said corporation, or Lake Erie Chemical Co.;

Facts being as above indicated and set forth, and that their said representations were false and misleading and grossly exaggerated their status as sellers of warfare products, neither they nor any of their officers or personnel had any general or privileged access to the secret, confidential, or restricted materials or information of any of the divisions of the War Department, nor access to materials or information of said Department or of the Army, which was in any respect superior to that of competitors, or which was not available to such competitors, said U. S. Ordnance Engineers, Inc., made or produced only small portion of products offered and sold by it, and had not been and was not solicited for bids on Government contracts for ordnance, munitions, or warfare chemicals or any of said products, and had not and did not sell to any branch of the Government, and there are substantial number of purchasers and prospective purchasers of such products in foreign countries, and purchasers for export of said products from the United States to foreign countries, who are not informed or familiar with the policy and practice of the War Department as respects supplying of specifications for manufacture of such products for the Government as above set forth and who are not informed and do not know that said Department prohibits, for the most

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part, private manufacture and sale for export of such products classified as "standard";

With tendency and capacity to mislead and deceive prospective purchasers and purchasers of warfare products for export and in foreign commerce into false and erroneous belief that such various representations as above set forth were true, and into consideration and purchase of their said products in reliance thereon, and with tendency and capacity, through said representations and practices, including those contrary to established public policies and regulations of the War Department, to induce consideration and purchase of their products, and divert export trade and foreign commerce in such products from their competitors in such trade and commerce, including manufacturers and sellers who refrain from and do not use selling methods or practices which are in violation of established policies and regulations of the War and Navy Departments, as contrary to public policy and to public interest, and contrary to the best interests of the trade:

Held, That such representations and practices had been and were to the prejudice of the public and competitors in export trade and foreign commerce, and constituted unfair methods of competition.

Mr. Jay L. Jackson for the Commission.

Jones, Day, Cockley & Reavis, of Cleveland, Ohio, 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," as extended by Section 4 of an Act of Congress approved April 10, 1918, entitled "An Act to promote export trade and for other purposes," the Federal Trade Commission having reason to believe that Lake Erie Chemical Co., doing business as U. S. Ordnance Engineers, Inc., both such corporations being hereinafter referred to as respondents, have been and are using unfair methods of competition in export trade in violation of the provisions of section 5 of said first named act as extended by section 4 of said last named act, and it appearing to the 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. The respondent, Lake Erie Chemical Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business in the city of Cleveland, in said State. It is now and for more than 1 year last past has been engaged in the manufacture and sale of chemicals, ordnance, and munitions, and in the distribution of said products between, among and across the various States of the United States, in the District of Columbia and in the business of exporting

such chemicals, ordnance, and munitions from the United States to foreign nations.

In the course and conduct of its business, the respondent, Lake Erie Chemical Co., is now and for more than 1 year last past, has been in substantial competition with other corporations and with persons, firms, and partnerships engaged in the manufacture, sale, and distribution of chemicals, ordnance, and munitions between, among, and across the various States of the United States, in the District of Columbia and in the export thereof to foreign nations.

PAR. 2. The respondent, U. S. Ordnance Engineers, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business in the city of Cleveland in said state, and with an export office located in New York, N. Y. The said respondent is in fact a controlled subsidiary of the respondent, Lake Erie Chemical Co., and is now and for more than 1 year last past has been engaged in the business of exporting, as the export agent of respondent, Lake Erie Chemical Co., chemicals, ordnance, and munitions from the United States to foreign nations, in substantial competition with other corporations, partnerships, firms, and individuals likewise engaged in the business of exporting chemicals, ordnance, and munitions from the United States to foreign nations.

PAR. 3. In the course and conduct of their business said respondents in soliciting the sale of and selling their products and professional services in interstate and foreign commerce advertised the same by means of illustrated catalogs which they distributed widely among customers and prospective customers, and in which the following statements and representations appear:

U. S. ORDNANCE ENGINEERS, Incorporated
Successors in Business to the Lake Erie Chemical Company

when in truth and in fact the Lake Erie Chemical Co. has at all times since its incorporation continued in business and the U. S. Ordnance Engineers, Inc., is not its successor, but in fact represents merely the separate incorporation of its export business to foreign countries.

At page 2 and on subsequent pages of section I of said catalog, under the heading of "Military Experience," the following statements appear:

Military experience in the manufacture of Ordnance Material is generally acknowledged to be of the utmost importance. Unless guided by officers who have actually taken part in both open and trench warfare, it is impossible

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for any manufacturer to visualize the kinds of equipment needed and the necessity for their perfect functioning.

* * * * *

U. S. Ordnance Engineers, Inc., is staffed by men expert in their knowledge of chemistry, electricity, and explosives, and in the precision methods necessary to the manufacture of military supplies. Added to this knowledge is their record of service in the United States Army and their wide experience in major operations of attack and defense in the World War.

Confidence in the technical ability of these officers is recognized in official military circles. Sound approval of the quality and effectiveness of the warfare material which they manufacture is indicated by wide international purchase and use.

MILITARY STANDARDS

The UNITED STATES ARMY has spent vast sums of money on experimental and development work both in the Ordnance Department and in the Chemical Warfare Service. To take advantage of this rich store of experience, U. S. Ordnance Engineers, Inc., conforms strictly to U. S. Army specifications in every possible respect.

The construction of fuzes has had especial attention, for unless the fuze functions, no other part can function. In all aerial drop bombs, grenades, and candles, the fuzes, boosters, and primer detonators are made in the closest possible accordance with U. S. Army specifications. U. S. Army standards are likewise followed in selecting the particular fuze to be used for each bomb or projectile.

U. S. Army standards are closely adhered to in the manufacture of all other equipment, such as portable chemical cylinders, smoke and gas screen apparatus for airplanes, tanks and gas projectors, bombs, etc.

At page 4 of section I of said catalog there appears a portrait of B. C. Goss, Ph. D., D. S. M., "Ex-Lieutenant Colonel, U. S. Army, President, U. S. Ordnance Engineers, Inc."; "Ex-Chief, Chemical Warfare Service, 2d American Army, A. E. F."; together with the following statement:

As Chemical advisor in the office of the Chief of Chemical Warfare Service, later as chief gas officer of the 1st Army Corps, and finally of the 2nd Army,

* * * * *

He retains his rank of Lieutenant Colonel in the Reserve Corps of the United States Army.

At pages 5 and 7 of section I of said catalog appear facsimile reproductions of letters signed by Brigadier General Amos A. Fries, Chief of Chemical Warfare Service; Brigadier General Malin Craig, Chief of Staff, Army of Occupation, U. S. A.; Major General Liggett, Commanding the First Army Corps, U. S. A.; and Major General George E. Leach, Chief, Militia Bureau, U. S. A., all having reference to the standing of Dr. Goss in the military service.

At page 6 of section I of said catalog appears the portrait of A. F. Spring, Vice President, U. S. Ordnance Engineers, Inc., who:

* * * during the World War served as an officer in the Chemical Warfare Service of the United States Army and after his discharge at the end of the war, he was commissioned in the Chemical Warfare Reserve and now holds the rank of Major in this branch of the service. He was recently ordered to active duty by the War Department and appointed Official Instructor in Chemical Warfare at the National Rifle Matches, Camp Perry, Ohio.

and a portrait of H. A. Grundler, Plant Superintendent, U. S. Ordnance Engineers, Inc., who:

* * * holds the rank of Lieutenant in the Chemical Warfare Reserve, assigned to the manufacturing arsenal, Toxic Smoke and Lachrymatory Division.

At page 7 of section I of said catalog, the following statements appear:

U. S. Ordnance Engineers, Inc., is ideally qualified to advise regarding the tactical uses of toxic or nontoxic gas, liquid fire, white-hot molten metal, and smoke. This company can organize, equip, and train a modern chemical warfare regiment, battalion, or company.

This instruction and organization is supervised by United States Army Chemical Warfare Service Reserve Officers in the company's employ, who are themselves chemists and chemical engineers of long experience. Dr. B. C. Goss, president of the company, prepared the orders for the use of chemicals in many major engagements of the U. S. Army in France.

At page 12 of section I of said catalog, under the statement:

Suppliers of fuzes, chemicals, and gas-protection equipment to the United States Government.

appear reduced photographs of 24 checks on the Treasurer of the United States to the order of Lake Erie Chemical Co., representing:

Remittances from the United States Government during one month for orders filled.

On the front cover and at pages 1, 2, and 3 of section II, and on pages 1, 6, and 7 of section III, and on page 2 of section IV of said catalog appear reproductions of official photographs taken by the U. S. Navy, and others taken by the U. S. Army Chemical Warfare Service, the latter having printed thereunder the statement "Courtesy of the U. S. Army Chemical Warfare Service." On page 2 of section II of said catalog appears a modified reproduction from the official Chemical Warfare textbook of a test on efficiency of rifle fire with target and firing point covered. At page 1 of section III, in addition to

(b) *Use of Military Titles.*—Officers will not use or permit to be used their military titles in connection with commercial enterprises of any kind. Military titles are conferred upon individuals for military purposes and their use as a commercial asset may subject both the individual officer concerned and the service itself to unfavorable criticism, which, even if unmerited, is unnecessary and inadvisable. Such use of military titles is disapproved by the War Department.

Officers will not engage in or permit their names to be connected with any activity, participation in which is incompatible with the status of an officer of the Army.

and the records of the Adjutant General of the officers of the U. S. Army, do not show that permission was ever given respondents, to use in advertising matter any official Chemical Warfare Service photographs or photographs of Ordnance Material.

PAR. 6. (a) The use of the name, U. S. Ordnance Engineers, Inc.; respondents' advertising which includes portraits of former officers of the U. S. Army in uniform, facsimile reproductions of written recommendations from former officers, photographs of checks on the Treasurer of the United States showing payments for purchases made by the United States Government, various references to the alleged utilization by said respondents of the developmental and test work done by the U. S. Army, and the use of U. S. Army standard explosives, the unauthorized use of official photographs taken by the U. S. Navy and the U. S. Army Chemical Warfare Service, and the use in descriptions of military material of official ordnance marks, has the capacity and tendency especially with foreign buyers, of confusing and misleading them respecting the relations of said respondents to the Government of the United States and the War Department, tending to induce the belief that respondents are representatives of or closely connected with the Government of the United States and the War Department and that because of such relationship respondents are especially qualified to supply purchasers of ordnance material and related products of the sort identical or nearly identical with that utilized by the War Department, when in truth and in fact such are not the facts. Said representations of respondents have had and do have the tendency and capacity to induce members of the public, particularly foreign buyers, to answer respondents' advertisements and to obtain their products, because of the erroneous belief thus engendered, and to divert trade to respondents from substantial competitors engaged in the sale of similar products in domestic and foreign commerce.

PAR. 7. The aforesaid practices of respondents tend to and do divert export trade to respondents from their said competitors. Such practices have the tendency to bring American trade into disrepute

with the general buying public in foreign countries and affect generally and adversely the reputation and good will enjoyed by such other exporters of and in the United States who compete with respondents in foreign commerce, and whose representations do not have the tendency and capacity to induce buyers to believe that they have any official or semiofficial connection with the Government of the United States and the War Department.

PAR. 8. The above representations and practices of respondents have been and are to the prejudice of and substantially injure the public and respondents' competitors in commerce, and constitute unfair methods of competition in export trade 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," as extended by Section 4 of an Act of Congress approved April 10, 1918, entitled "An Act to promote export trade 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 the 29th day of June, 1935, issued and served its complaint in this proceeding upon respondents, Lake Erie Chemical Co., and U. S. Ordnance Engineers, Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act, as extended by section 4 of an act of Congress approved April 10, 1918, entitled "An Act to promote export trade and for other purposes." On the 22d day of July, 1935, respondents filed their separate answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and their counsel, Messrs. Jones, Day, Cockley & Reavis, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and stipulation, said stipulation having been approved, accepted and filed, 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Lake Erie Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 2200 Scranton Road (formerly 5806 Hough Avenue) in the city of Cleveland, State of Ohio. For several years immediately past said corporate respondent has been, and now is, engaged in the business of manufacturing and selling warfare chemicals, ordnance, munitions and kindred products, and in offering for sale and selling the same to prospective purchasers and purchasers located in and throughout the several States of the United States and the District of Columbia, in the course of which it has caused, and causes, said products, when sold or ordered, to be shipped and transported from its place of business in the State of Ohio to said purchasers located in various States of the United States other than the State of Ohio and to purchasers located in the District of Columbia.

For several years immediately prior to the 8th day of August, 1933, said respondent directly engaged in the business of offering for sale and selling its aforesaid products to prospective purchasers and purchasers located in foreign countries, and caused said products, when sold or ordered, to be shipped and transported from its place of business in the United States to purchasers located in various countries other than the United States of America.

On the 8th day of August 1933, Mr. B. C. Goss, president of said respondent company, and others of its managing officials, organized a corporation known as "U. S. Ordnance Engineers, Inc.," being the corporate respondent named in the complaint and referred to herein, and caused the same to be incorporated under the laws of the State of Ohio, and thereupon authorized the said corporation to engage in offering for sale and selling the said products of respondent Lake Erie Chemical Co. to prospective purchasers and purchasers located in foreign countries, and for sale and distribution in export trade from the United States.

Respondent, U. S. Ordnance Engineers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 2200 Scranton Road (formerly 5806 Hough Avenue) in

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the city of Cleveland, State of Ohio. Said corporation was promoted, organized and incorporated on August 8, 1933, by individuals who were then the managing officers and stockholders of respondent Lake Erie Chemical Co. Respondent Lake Erie Chemical Co., acquired none of the stock of, and does not own directly or indirectly any of the stock of, said respondent, U. S. Ordnance Engineers, Inc. All of the latter's voting stock is owned, with a few exceptions, by individuals who are also owners of the voting stock of Lake Erie Chemical Co. Of the five directors of respondent, U. S. Ordnance Engineers, Inc., two are directors of respondent, Lake Erie Chemical Co., said respondents having a common president and treasurer but different vice-presidents and secretaries.

Respondent, U. S. Ordnance Engineers, Inc., maintains no offices outside of the city of Cleveland, Ohio, but it does employ a selling representative, one F. V. Huber, who sells upon a commission basis, maintains offices at his own expense at 247 Park Avenue (formerly 21 West Street) in the city of New York, N. Y., and at all times material to this proceeding has been, and now is, the exclusive selling representative of said respondent in South and Central American countries. The said representative is authorized by respondent to, and does, carry the name of U. S. Ordnance Engineers, Inc., on the door of his offices and a listing of said name in the New York Telephone Directory, all at his own expense. With the knowledge and consent of the managing officers of said corporate respondent, it has been, and is, the practice of said representative to imprint or rubber stamp his New York address and the name of U. S. Ordnance Engineers, Inc., upon the face of certain catalogs, represented by "Commission's Exhibit No. 1" hereto annexed, made a part hereof, and hereinafter referred to, and in the course thereof said representative did imprint or rubber stamp on the face of certain of said catalogs the following:

U. S. ORDNANCE ENGINEERS, INC.,
Export Department,
21 West Street, New York, New York,
Cable Address: "Rabuh New York."

Since the 8th day of August 1933, respondent, U. S. Ordnance Engineers, Inc., has been, and now is, engaged in the export business of offering for sale or selling warfare chemicals, ordnance, munitions, and kindred products, primarily the products manufactured by, although not limited to, respondent, Lake Erie Chemical Co., to prospective purchasers and purchasers located in foreign countries, and has caused and causes the same, when sold or ordered, to be shipped and exported from the United States to purchasers thereof located

in countries other than the United States of America. In addition thereto said respondent maintains and sells an engineering service, constructs gas plants for foreign governments, and also sells a service involving instruction in tactics of a military and civil nature.

Since the 8th day of August 1933, respondents, Lake Erie Chemical Co. and U. S. Ordnance Engineers, Inc., have been, and now are, jointly engaged in causing the aforesaid products of respondent, Lake Erie Chemical Co. to be advertised, offered for sale, sold, and exported in foreign commerce and export trade from the United States to foreign countries, in the course of which said respondents have been and are in competition with other corporations, firms, partnerships, or individuals engaged in offering for sale, selling, and exporting like products in said commerce and trade.

PAR. 2. During the month of November 1933, respondents caused approximately 700 copies of a catalog, consisting of a green-colored cover and 22 separate pages of advertising statements, illustrations, and representations, relating and referring to the products of respondents, to be made up and thereafter circulated and distributed to and among prospective foreign customers for the products therein listed and offered for sale, including all purchasers located in foreign countries, who had been customers of respondent, Lake Erie Chemical Co. Most of said products are products manufactured by respondent, Lake Erie Chemical Co.

The outside front cover of said catalog bears in print, among other things, the name and address of respondent, U. S. Ordnance Engineers, as follows:

U. S. ORDNANCE ENGINEERS, INC.
CLEVELAND . OHIO . U. S. A.

The first inside front page, the inside last page and pages numbered section II—page 1, section III—page 1, section IV—page 1, section V—page 1, section VI—page 1, and section VII—page 1, bear in print, among other things, reference to both respondents, as follows:

U. S. ORDNANCE ENGINEERS, Incorporated Successors in Business to the
Lake Erie Chemical Company
5806 HOUGH AVENUE, CLEVELAND, OHIO, U. S. A.
CABLE ADDRESS—"LECCO, CLEVELAND"—Bentley's Code

A trade-mark, in the form of an eagle, bearing in his talons an aerial projectile with the word "LECCO" imprinted thereon, appears on the outside front cover and on each separate page of said catalog. The word "LECCO", as it appears throughout said catalog, is an abbreviation for, and signifies, "Lake Erie Chemical Company,"

respondent herein. The said trade-mark also appears separately on the stationery, letterheads and envelopes used by respondent, U. S. Ordnance Engineers, Inc. The said trade-mark is thus used with the knowledge and consent of the managing officials of respondent, Lake Erie Chemical Co.

The full and complete corporate name of respondent U. S. Ordnance Engineers, Inc., is "U. S. Ordnance Engineers, Inc.," and the letters "U. S." appearing as a part thereof are not abbreviations of any part of said corporate name. However, prospective purchasers and purchasers of warfare chemicals, ordnance, and munitions, both in the United States and in foreign countries, have construed and do construe the letters "U. S." in connection with the corporate name of respondent U. S. Ordnance Engineers, Inc., to stand for and signify "United States." From time to time inquiries have been received by the Department of State and by the War Department of the United States Government relative to said respondent, in which said respondent is referred to as "United States Ordnance Engineers, Inc."

PAR. 3. On Page 2 and following pages of section I of said Catalog appear the following statements:

MILITARY EXPERIENCE

Military Experience in the manufacture of Ordnance Material is generally acknowledged to be of the utmost importance. Unless guided by officers who have actually taken part in both open and trench warfare, it is impossible for any manufacturer to visualize the kinds of equipment needed and the necessity for their perfect functioning.

The lives of men and the success or failure of the military operation involved, depend upon how well the manufacturer has done his part. Defects in munitions cannot be remedied at the front.

U. S. Ordnance Engineers, Inc. is staffed by men expert in their knowledge of chemistry, electricity, and explosives, and in the precision methods necessary to the manufacture of military supplies. Added to this knowledge is their record of service in the United States Army and their wide experience in major operations of attack and defense in the World War.

Confidence in the technical ability of these officers is recognized in official military circles. Sound approval of the quality and effectiveness of the warfare material which they manufacture is indicated by wide international purchase and use.

MILITARY STANDARDS

The United States Army has spent vast sums of money on experimental and development work both in the Ordnance Department and in the Chemical Warfare Service. To take advantage of this rich store of experience, U. S. Ordnance Engineers, Inc. conforms strictly to U. S. Army specifications in every possible respect.

The construction of fuzes has had especial attention, for unless the fuze functions, no other part can function. In all aerial drop bombs, grenades,

and candles, the fuzes, boosters, and primer detonators are made in the closest possible accordance with U. S. Army specifications. U. S. Army standards are likewise followed in selecting the particular fuze to be used for each bomb or projectile.

U. S. Army standards are closely adhered to in the manufacture of all other equipment, such as portable chemical cylinders, smoke and gas screen apparatus for airplanes, tanks and gas projectors, bombs, etc.

QUALITY

The quality of chemicals, metals, electrical and other equipment which enter into the products of U. S. Ordnance Engineers, Inc. is the highest obtainable for the purpose. Every item is carefully tested and rigidly inspected, both before and after assembly. Materials are described in detail in specification sheets and actual records of performance are supplied. No precaution is omitted that could possibly increase the accuracy or safety in use.

PLANT

U. S. Ordnance Engineers, Inc. maintains a modern chemical manufacturing plant in Cleveland, Ohio, U. S. A., where assembling and loading is done.

On Page 1 of Section III of said catalog appear the following statements:

AERIAL DROP BOMBS

In standardizing on "cylindrical" bomb bodies, U. S. Ordnance Engineers, Inc. follows the trend of the U. S. Army practice, thus providing an easily procurable body which is economical to manufacture and which, at the same time, has excellent flight and detonation characteristics.

Major General Samuel Hof, Chief of Ordnance, U. S. Army, says in his 1932 report on "The Progress of American Munitions During the Past Year":

Recent experience has shown that cylindrical bombs are as stable as the stream-lined type and have the advantages of ease of manufacture, reduced cost, and high rate of production by processes commonly used in industry.

In selecting types of bombs and weights of each, it is urgently recommended that consideration be given to the results obtained and conclusions drawn from the vast amount of development and test work done by the U. S. Army.

All materials entering into the construction of bombs and fuzes supplied by U. S. Ordnance Engineers, Inc. are of the best possible quality and are subjected to rigid inspection during production, as well as on completion of the finished assembly.

Further statements referring to the "U. S. Army" and to "standard" equipment of the United States Army appear throughout said catalog. On page 8 of section VII, for example, referring to High-Explosive Fragmentation Grenades, appear the statements, among others:

They are loaded with the latest U. S. Army standard high explosive, which is far superior to T. N. T. for this purpose.

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While the rod type rifle grenade is U. S. Army standard, V. B. Rifle Grenades Mk. I can also be supplied in Fragmentation Grenades only.

On page 2, section III, of said catalog, appears an official U. S. Army report on the Crater effect of demolition bombs, together with the pictorial representation of a crater made by the explosion of such bomb.

On page 4 of section I of said catalog, beneath the words "EX-CHIEF, CHEMICAL WARFARE SERVICE" appears a portrait of B. C. Goss, president of the respondent companies, in the official military dress or uniform of the United States Army, together with the following statements, among others:

B. C. GOSS, PH.D., D.S.M.
Ex-Lieutenant Colonel, U. S. Army
PRESIDENT, U. S. ORDNANCE ENGINEERS, Inc.

Dr. Goss is a well-known army man and the leading expert in the manufacture and use of gas.

He retains his rank of Lieutenant Colonel in the Reserve Corps of the United States Army.

On page 6 of section I of said catalog appear portraits of A. F. Spring and H. A. Grundler, in the official military dress or uniforms of the United States Army, together with the following statements, among others:

A. F. SPRING, VICE PRESIDENT, U. S. ORDNANCE ENGINEERS, INC.

During the World War he served as an officer in the Chemical Warfare Service of the United States Army and after his discharge at the end of the war, he was commissioned in the Chemical Warfare Reserve and now holds the rank of Major in this branch of the service. He was recently ordered to active duty by the War Department and appointed Official Instructor in Chemical Warfare at the National Rifle Matches, Camp Perry, Ohio.

H. A. GRUNDLER, PLANT SUPERINTENDENT, U. S. ORDNANCE ENGINEERS, INC.

He holds the rank of Lieutenant in the Chemical Warfare Reserve, assigned to the manufacturing arsenal, Toxic Smoke and Lachrymatory Division.

On page 7 of section I of said catalog appear facsimile reproductions of letters of recommendation, referring to the said B. C. Goss and A. F. Spring and their standing in military service and signed by A. A. Fries, Brigadier General, U. S. A., Chief of Chemical Warfare Service; Malin Craig, Chief of Staff, Army of Occupation; Liggett, Major General, Commanding First Army Corps, and George E. Leach, Major General, Chief, Militia Bureau.

On page 7 of section I of said catalog further appear the following statements:

U. S. Ordnance Engineers, Inc., is ideally qualified to advise regarding the tactical uses of toxic or non-toxic gas, liquid fire, white-hot molten metal and smoke. This company can organize, equip, and train a modern chemical warfare regiment, battalion or company.

This instruction and organization is supervised by United States Army Chemical Warfare Service Reserve Officers in the company's employ, who are themselves chemists and chemical engineers of long experience. Dr. B. C. Goss, President of the company, prepared the orders for the use of chemicals in many major engagements of the U. S. Army in France.

On the front cover and at pages 1, 2, and 3 of section II, and on pages 1, 6, and 7 of section III, appear reproductions of official photographs taken by U. S. Navy and others taken by the U. S. Army Chemical Warfare Service, the former having printed thereunder the statement "Official Photographs U. S. Navy" and the latter having printed thereunder the statement "Courtesy of the U. S. Army Chemical Warfare Service."

In addition thereto, on pages 3 and 4 of section III and page 2 of section V of said catalog, in connection with projectiles and fuzes thereon illustrated, appear such U. S. Government identification marks as "Mk. VII," "M5," "Mk. XI," "Mk. VII. MII," "Mk. XIV," "M-6," "M-10," and "M-1." The said markings are United States Government markings placed only on "standard" products used by the Government of the United States. Such markings do not appear on products sold by respondents to foreign purchasers, but the said markings as they appear in the aforesaid catalog Exhibits indicate and signify to a substantial number of foreign purchasers that the products so represented are "standard" products of the United States Government.

On page 12 of section I of said catalog, in connection with reduced photographs of 24 checks on the Treasurer of the United States to the order of respondent, Lake Erie Chemical Co., appear the following statements:

Suppliers of fuzes, chemicals and gas protection equipment to the United States Government

Remittances from the United States Government during one month for orders filled.

PAR. 4. The aforesaid portraits of officers in their official dress and uniforms as officers of the United States Army, facsimile reproductions of letters of recommendations from officers of the United States Army and the War Department of the United States Government, photographs of checks on the Treasurer of the United States showing payments for purchases by the United States Government the references to utilization of the experimental, development, and test work and experience of the United States Army, Ordnance Department,

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and Chemical Warfare Service, the numerous references to U. S. Army specifications and standards, and to the United States Army, Ordnance Department, Chemical Warfare Service, the reproduction of official test report and crater effect of demolition bomb carrying reference to the Ordnance Department of the United States Army, and the use of United States Government identification markings for warfare products used by the United States Government, all as appearing in the aforesaid catalogue, in connection with official photographs taken by the United States Navy and by the United States Army Chemical Warfare Service, and as combined with and appearing under the name U. S. Ordnance Engineers, Inc., and with the words "U. S. Ordnance Engineers, Incorporated.—Successors in business to the Lake Erie Chemical Company," imply and represent and have a tendency and capacity to induce the belief, that respondents have had, and that respondent U. S. Ordnance Engineers, Inc., has, such official, semiofficial, or close relationship with the United States Government, through its Army, Ordnance Department and Chemical Warfare Service, as to afford respondent U. S. Ordnance Engineers, Inc., access to, and use of, all information and experience, including experimental and development work, of said military subdivisions of the United States Government relating to warfare products and to United States Government standards and specifications therefor; that respondent U. S. Ordnance Engineers, Inc., is favored and especially fitted by such relationship to supply purchasers with warfare ordnance, munitions, chemicals, and related products; that said products conform to United States Government standards and are identical, or nearly identical, with those used by the Government of the United States, and that respondent U. S. Ordnance Engineers, Inc., is the successor in business to the Lake Erie Chemical Co.

The aforesaid representations are false and misleading and otherwise grossly exaggerate respondent's status as sellers of warfare products, as more fully appears from the following statement of the facts.

The full and complete corporate name of respondent U. S. Ordnance Engineers, Inc., is "U. S. Ordnance Engineers, Inc.," and the letters "U. S." appearing as a part thereof are not abbreviations of any part of said corporate name. However, prospective purchasers and purchasers of warfare chemicals, ordnance, and munitions, both in the United States and in foreign countries, have construed and do construe the letters "U. S." in connection with the corporate name of respondent U. S. Ordnance Engineers, Inc., to stand for and signify "United States." From time to time inquiries have been received by the Department of State and by the War Department of the United

States Government relative to said respondent, in which said respondent is referred to as "United States Ordnance Engineers, Inc."

Among prospective purchasers and purchasers of warfare chemicals, ordnance, and munitions for export from within the United States, inclusive of representatives of foreign governments, there are a substantial number who regard the Government of the United States as peculiarly and specially fitted to select and buy warfare chemicals, ordnance, and munitions of the highest utility and value for the purposes intended, and who ascribe such utility and value to such products when made for, or used by, the Government of the United States, such that the representation of any such product as being one approved or used by the Government of the United States materially contributes to induce and effect the sale of such product to, and purchase by, such purchasers.

As a part of its executive branch of government, the Government of the United States maintains a "War Department," the said Department itself being independently known and described as the "United States War Department." The said Department maintains a separate division on ordnance which is generally known and described as the "Ordnance Department." The said Ordnance Department is the responsible agency of the War Department for the purchase, supply, and disposition of ordnance and munitions for the United States Army. A great quantity of such supplies are manufactured by the Government of the United States under the supervision of said Department. Another branch of the said War Department is described and known as the "Corps of Engineers," sometimes described and known as "Engineering Division of the United States War Department." Another branch or division of the said War Department is known and described as the "Chemical Warfare Service," which is the responsible agency of the War Department for the supervision of the manufacture of certain warfare chemicals and for the purchase and supply thereof for the United States Army.

The aforesaid divisions of the War Department are also the responsible agencies of the War Department in the matter of planning for the supply of warfare products coming within their respective Departments in times of national emergency. Certain materials and information, including standards and specifications for warfare supplies, are regarded and marked as "secret," or as "confidential," or as "restricted." Materials so marked are not publicly disseminated and are not made available to private persons, except that "restricted" information is subject to dissemination to private persons upon special grant by the division of the War Department responsible therefor. These classifications are employed with respect to a great many

of the ordnance, munitions, and chemical warfare products, and the plans and specifications therefor, used by the Government of the United States. Information not so classified is generally available to the public and private persons in the form of public documents. Neither of the respondent corporations, or any of their officers or personnel, have had or have any general or privileged access to the secret, confidential, or restricted materials or information of any of the divisions of the War Department, and said respondents have not had and have no access to materials or information of the War Department or of the United States Army, which is in any respect superior to that of competitors of the respondent corporations, or to materials and information which is not available to such competitors.

Through and on behalf of its War Department and Army, the United States Government has in fact spent vast sums of money on experimental and development work both in the Ordnance Department and in the Chemical Warfare Service, but the information incident thereto, for the most part, is retained in the confidential files of the War Department, and is not available to respondents or to competitors of respondents. As a general rule, where such information, including plans and specifications (drawings) for so-called "standard" ordnance, munitions, and warfare chemical products, is supplied to any manufacturer, it is for purpose only of production for use of the Government of the United States by such manufacturer, and not for the production and sale of the products involved to others than the Government of the United States.

"United States Army Ordnance and Specifications," containing general specifications and regulations covering ammunition, and "U. S. Army Specifications," containing general specifications and regulations covering ammunition except small arms ammunitions, which are distributed to manufacturers who are supplied with designs and specifications incident to contracts with the aforesaid Ordnance and War Departments for the production of materials of prescribed design for said Departments, provide among other things as follows:

General Specifications for Ammunition, page 4,

III Drawings—

22. Drawings furnished by United States—Where the Ordnance Department contracts for material of a prescribed design that Department will furnish to the contractor one set of prints for use in manufacture. These prints will be taken from the Ordnance Department's tracings, and shall be considered confidential, for the use of the contractor in the prosecution of Government work only, and will show general features and such details as are required in the execution of the work.

General Specifications for Ammunition Except Small Arms Ammunition,
pages 1 and 2,

II. Duties and Responsibilities of the Contractor—

10. Drawings.—a. Prescribed design.—In cases where the War Department contracts for materials of a prescribed design, the Department will furnish to the contractor a set of prints for use in manufacture. All drawings furnished by the United States shall be considered confidential and for the use of the contractor in the prosecution of Government work only.

A substantial number of warfare chemicals, ordnance, and munitions purchasers and prospective purchasers located in foreign countries, and purchasers for export of said products from the United States to foreign countries, are not informed or familiar with the aforesaid policy and practice of the War Department, or with the particulars and details of said policy and practice as related to private manufacturers of such products in the United States. Said prospective purchasers and purchasers generally are not informed and do not know that the War Department of the United States Government for the most part prohibits the private manufacture and sale for export of those warfare chemicals, ordnance and munition products which are privately manufactured for, and used by, the Government of the United States and classified as "standard."

Respondent Lake Erie Chemical Co. is, and continuously has been, in the business of manufacturing and selling warfare chemicals, ordnance, munitions, and kindred products, and respondent U. S. Ordnance Engineers, Inc., is not successor to the business of the Lake Erie Chemical Co. Most of the products represented in the aforesaid catalogue are manufactured by respondent Lake Erie Chemical Co. Respondent U. S. Ordnance Engineers, Inc., manufactures or produces only a small portion of the products which it offers for sale and sells. Said respondent has not been, and is not, solicited for bids on Government contracts for ordnance, munitions, or warfare chemicals, or any of said respondents' products, and it has not sold, and does not sell, to any branch of the Government of the United States. Respondent Lake Erie Chemical Co. from time to time has sold such products to the Government of the United States and from time to time has been the recipient of information relating to ordnance, munitions, and warfare chemical products, or otherwise disseminated incident to contract bids and to the purchase of such materials as the War Department or United States Army purchases from manufacturers from time to time.

The chemical bombs referred to and illustrated on page 5 of section III of the aforesaid catalogue are not manufactured by respondent

ent U. S. Ordnance Engineers, Inc. The said bombs have not been adopted or approved by the U. S. Government and are not "standard" products used by the United States Army or Navy. With respect to the statement appearing on said page, "For chemical fillings, the 25 pound and 100 pound bombs are United States Army standard," the chemical fillings for said bombs are not "U. S. Army Standard." Certain other products offered for sale and represented in the said catalogue, such as gas masks represented on page 6, section IV, and giant military candles represented on page 5 of section VII, among other products represented therein, are not products used by the Army, Navy, War and Navy Departments of the United States Government, and other of said products represented therein are not "standard" products or equipment used by any of said branches of the United States Government.

The bomb described as "100 lb. (120 lb.) Demolition Bomb," illustrated and referred to on page 2 of section III of said catalogue, in connection with a photograph and chart or graph report showing the crater effect of demolition bombs, has not been and is not used by the Government of the United States. The chart or graph appearing on said page, in connection with such photograph, is a report of a test conducted by the United States Ordnance Department on a cylindrical type of bomb and the same was made and supplied by said Department with the written proviso that the same was not to be used for advertising or sales promotion purposes.

PAR. 5. The president of the respondent companies, and the vice president of respondent U. S. Ordnance Engineers, Inc., B. C. Goss, and A. F. Spring, respectively, are in fact exofficers of the U. S. Army. The said persons and A. H. Grunder, plant superintendent of said respondent, whose pictures, names, and military titles appear in the aforesaid catalogue, were at the time the said catalogue was distributed, as aforesaid, officers of the Reserve Corps of the United States Army.

It is the policy and practice of the War and Navy Departments of the United States Government to prohibit and prevent the use of official or military titles, uniforms, and insignia, in any way connected with such departments or with the United States Army or Navy, in connection with any commercial and nongovernmental enterprise, and it is contrary to the established policy of said Departments for any military or naval officers, Reserve or otherwise, whether active or retired, or for any private individual, in any way to use or employ official United States Government military or naval titles, uniforms, or insignias, in connection with the promotion of a private commercial enterprise. The military titles, uniforms and insignia, re-

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ferred to in connection with the officers and photographs appearing on pages 4, 5, 6 and 7 of of section I of said catalog are in fact titles, uniforms and insignia employed and used by the United States Army in official military service of the Government of the United States.

PAR. 6. Among the competitors of respondents, hereinabove referred to in paragraph 1, are manufacturers and sellers who refrain from and do not use selling methods or practices which are contrary to established policies and regulations of the War and Navy Departments of the Government of the United States. Such manufacturers so refrain upon the ground that such selling methods or practices are contrary to public policy and to public interest and contrary to the best interests of the trade.

PAR. 7. The aforesaid representations, which respondents caused to be made, as aforesaid, have a tendency and capacity to mislead and deceive prospective purchasers and purchasers of warfare products, for export and in foreign commerce, into the false and erroneous belief that said representations are true, and into the consideration and purchase of respondents' products in reliance upon such belief. The aforesaid representations and practices, including representations and practices which are contrary to the aforesaid established policies and regulations of the War Department of the Government of the United States, further have a tendency and capacity to induce the consideration and purchase of respondents' products and to divert export trade and foreign commerce in warfare products to respondents from their competitors in such trade and commerce.

CONCLUSION

The aforesaid representations and practices of respondents have been, and are, to the prejudice of the public and of respondents' competitors in export trade and foreign commerce and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act as extended by section 4 of an act of Congress, approved April 10, 1918, entitled "An Act to promote export trade, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, and a stipulation as to the facts entered into between respondents herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further

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evidence of other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceedings, and the Commission having made its findings as to the facts and conclusion that respondents have violated the provisions of the Federal Trade Commission Act as extended by Act of Congress approved April 10, 1918, entitled "An Act to promote export trade, and for other purposes."

It is ordered, That respondents and each of them, Lake Erie Chemical Co. and U. S. Ordnance Engineers, Inc., their officers, agents, employees, and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of warfare chemicals, ordnance, munitions, and kindred products in foreign commerce and export trade, do forthwith cease and desist from:

1. Representing that respondents, or either of them, or any of their officers, agents, or employees, directly or indirectly, have had, or have, any official, semiofficial, or close relationship with any department or subdivision of the Government of the United States, which affords respondents, or either of them, access to, or use of, all information in the possession of such department or subdivision relating to warfare products, or to experimental or development work connected therewith.

2. Representing that respondents, or either of them, or any of their officers, agents, or employees, directly or indirectly, have had, or have, access to, or use of, any information in the possession of any department or subdivision of the Government of the United States relating to any warfare product, or to any experimental or development work connected therewith, when such is not the fact.

3. Representing that all, or any, of respondents' products are "standard" products of the United States Army, Ordnance, or Chemical Warfare Service, or are used by said Government, or are identical, or nearly identical, with warfare products used by said Government, when such is not the fact.

4. Representing or referring to any individual, or officer of the United States Army, directly or indirectly in the employ of either of respondents, by way of reference to any official military title which such individual or officer presently holds by virtue of any existing officership in, or official connection with, any military subdivision or department of the Government of the United States.

5. Employing the use of any photograph of an officer of the United States Army in the official military dress or uniform of an officer of the United States Army.

6. Employing the use of any test report on any warfare product by any department or subdivision of the Government of the United States, which has been or is issued or supplied by such department or subdivision subject to prohibition or restriction against the use of such test report for advertising or sales promotion purposes; or

7. Representing respondent U. S. Ordnance Engineers, Inc., as successor in business to Lake Erie Chemical Co., when such is not the fact.

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

IN THE MATTER OF
ORVILLE J. BOND, TRADING AS ZEPHYR RADIO COMPANY

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

Docket 3294. Complaint, Jan. 4, 1938—Decision, June 14, 1939

Where an individual respectively engaged, under different trade names, in sale of radio parts to wholesalers, and in sale of radio sets, purchased from manufacturers thereof, to service men or hardware dealers, and, as thus engaged in selling to purchasers in other States, in substantial competition with those engaged in sale and distribution of similar sets through the medium of mail orders among the various States and in the District of Columbia; in advertising his said sets through direct mail, from lists of prospects, in periodicals and in a semimonthly newspaper—

Represented that his five-tube, \$6.95 set would get politics, news, music, market and weather reports on a "new Zephyr world-wide, all electric, battery, or auto radio" with all latest improvements, etc., facts being his said Zephyr set, complete with all working parts and aerial designed as local receiver primarily for reception in a radius of not over 100 miles, was not capable of picking up signals from the major continents of the world, or even from remote places on this continent, and would not, as understood from term, give "world-wide reception;"

With tendency and capacity to mislead and deceive substantial portion of purchasing public into belief that such representation was true, and with result, as direct consequence of such mistaken and erroneous belief thus induced, of causing consuming public to purchase substantial volume of said sets, and of diverting trade unfairly from those engaged in sale of like and similar products and intended for like and similar purposes, and who truthfully advertise the same; to the substantial injury of competition in commerce:

Held, That such act and practice, as above set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

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

Mr. Carrel F. Rhodes and *Mr. Merle P. Lyon* for the Commission.

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 Orville J. Bond, individually and trading as Zephyr Radio Co., hereinafter referred to as respondent, has been for more than 2 years last past, and is, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a pro-