

IN THE MATTER OF
ANN W. CARTER, TRADING AS PROCESS ENGRAVING
COMPANY

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

Docket 3637. Complaint, Oct. 27, 1938—Decision, Mar. 19, 1940

Where an individual engaged in printing stationery for social and business purposes, including invitations, announcements, calling cards, letterheads, envelopes, and similar products, and in sale of such various stationery to purchasers in State of California and in other States and in the District of Columbia, in substantial competition with others likewise engaged in printing and selling stationery for such purposes in commerce as aforesaid, and in competition particularly with those engaged in business of engraving and selling engraved stationery in commerce for purposes aforesaid, and including many who produce engraved stationery products designed and intended for such purposes and sell said products into and through other States as above set forth, and truthfully represent the same as produced by the engraving process, as known to trade and public generally, and others who sell stationery products for such purposes but do not sell engraved stationery products and do not in any means or manner represent themselves as manufacturers of or dealers in engraved stationery products, and among whom are many who produce stationery by same process as employed by individual aforesaid—

Featured trade name, including words "Process Engraving," in circulars, business cards, letterheads, blotters, stickers, memoranda pads, and other advertising literature circulated among purchasers and prospective purchasers, and in statements of account sent to purchasers in various States displayed trade name aforesaid and featured same in advertisements in newspapers and periodicals circulated among prospective purchasers, and referred in all her various circulars, pamphlets, etc., to process employed by her in producing her products as "engraving," and held herself and company out to public as "engraver" and "process engraver," and her product as "engraving" or "process engraving";

Facts being she did not own or operate an engraving company and was not engaged in business of engraving or producing engraved stationery, and letters, words or designs appearing upon her said products made and sold by her were not the result of engraving process and were not engraved stationery, as preferred by substantial portion of purchasing public over that produced by process such as employed by her, and were not, as aforesaid, result of such much more costly engraving process, as long understood by trade and consuming public as meaning, as applied to business or social stationery, products in which words, letters or designs have been raised from general plane of stationery surface and are in relief, through result of application to stationery, under pressure, of inked metal plates theretofore specially engraved, cut, or incised for and used in production of such stationery by process involving, among other things, the cutting or incising of the plates in various ways so that letters, etc., are below surface of

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plate, but constituted raised printing accomplished through use of certain ink on printing press and application to resulting printing of certain powder and baking process, with result which so closely resembled, in appearance and feel, genuine engraving as to make two so difficult of ascertainment that in many cases those in trade and familiar with both must use great care to avoid mistake in identifying two;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that said individual owned or operated engraving company and was engaged in business of producing and selling engraved stationery, and that letters, words or designs contained upon her said stationery were engraved and result of genuine engraving process, as above indicated, and as known to trade and public generally, and to induce number of consuming public, because of such belief, to purchase her said products and thereby unfairly divert trade to her from her competitors in commerce as aforesaid:

Held, That such acts and practices were each and all to the prejudice 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. DeWitt T. Puckett and *Mr. Merle P. Lyon* for the Commission.

Mr. Walter J. Walsh, of San Francisco, Calif., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority invested in it by said act, the Federal Trade Commission, having reason to believe that Ann W. Carter, an individual, trading under the firm name and style of Process Engraving Co., hereinafter referred to as the 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, Ann W. Carter, is an individual, trading under the firm name and style of Process Engraving Co., and having her office and place of business at 694 Market Street, San Francisco, Calif. Respondent is now, and has been for more than 2 years last past, engaged in the business of printing stationery for social and business purposes, including invitations, announcements, calling cards, letterheads, envelopes, and names on Christmas cards, and in selling said products in commerce as herein set out.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said stationery so printed, when sold, to be transported from her office and place of business in the State of California to the purchasers thereof located in other States of the United States and in the District of Columbia. There is now and has been at all times mentioned herein, a course of trade in said stationery sold by respond-

ent in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of her said business, respondent is now, and has been in substantial competition with other individuals, and with firms, partnerships, and corporations, likewise engaged in printing stationery for social and business purposes and in selling such stationery in commerce among and between the various States of the United States and in the District of Columbia, and also with individuals, partnerships, firms, and corporations engaged in producing engraved stationery for social and business purposes and in selling such stationery in commerce between the various States of the United States and in the District of Columbia.

PAR. 4. In the course of the operation of said business and for the purpose of inducing individuals, firms and corporations to purchase said stationery products, respondent has printed and circulated throughout the several States to customers and prospective customers, circulars, business cards, letterheads, blotters, stickers, memorandum pads, and other advertising literature, emphasizing the name "Process Engraving Company" and referring to the products manufactured by her as "process engraving." Respondent has also published or has caused to be published in newspapers, magazines, periodicals, and pamphlets circulated between and among the various States of the United States and the District of Columbia advertisements containing, among others, the following statements:

Process Engraving Co. Correct business and social stationery.

Christmas Cards—Outstandingly Different—Process Engraving Company. The oldest and original.

Christmas Cards in the modern motif. Make your selection from the largest assortment in San Francisco, and have them process-engraved with your name. Process Engraving Co.

All of said statements, together with similar statements, purport to be descriptive of respondent's business and the products manufactured and sold by her. In all of her circulars, pamphlets, and other advertising literature, respondent holds herself and her company out to the public as an "engraver" or "process engraver" and her product as "engraving" or "process engraving."

PAR. 5. The process used by the respondent in the printing of social and business stationery in commerce as hereinbefore set out is not the process used in producing genuinely engraved stationery. Respondent does not own or operate an "engraving" company, and respondent is not engaged in the business of "engraving." The letters, words, or designs upon stationery products manufactured, offered for sale, and sold by respondent, in the manner aforesaid, are not the re-

sult of "engraving" according to the trade and public understanding of the term.

PAR. 6. The word "engraving" as it is used in the graphic arts may be applied either to an engraved intaglio plate upon which letters, words, or designs have been incised or cut, or to impressions made from such a plate. Such plates are cut or incised by hand, by machine, by etching with acid, by a transfer from other engravings, and by other means, but in all cases the letters, words, or designs so to be produced upon stationery are cut below the surface of the plate. To make impressions from such a plate, the ink is applied to the plate, then the plate is wiped so that the ink remains only in the lines cut below the surface. The inked plate is then put upon a piece of stationery or article to be engraved, and pressure is applied sufficient to force the surface of the stationery into the lines cut in the plate, causing the ink in such lines to adhere to the paper on which the impression is to be made.

PAR. 7. The words "engraving" and "engraved" when used in connection with, or descriptive of, business or social stationery, mean, and the trade and consuming public understand, and for many years have understood, them to mean that the stationery products so being referred to or described contain letters, words, or designs which are raised from the general plane of the stationery surface, and are in relief, and are the result of the application thereto, under pressure, of inked metal plates which have been specially engraved, cut, or carved for, and are used in, the production of such stationery by the process more particularly described herein in paragraph 6.

PAR. 8. The process used by the respondent in the manufacture of her stationery products is not the genuine engraving process from inked plates as hereinabove described, but is a thermographic process resulting from the use of a chemical in powdered form applied to type printing while the ink is wet and passed through a baking process whereby the chemical fuses with the wet ink so as to produce a raised-letter effect resembling in appearance or simulating genuine engraving.

PAR. 9. The cost of genuine engraved stationery greatly exceeds the cost of stationery of like stock, grade, or character produced by the process employed by the respondent, as set out in paragraph 8 hereof, or produced by any other printing process, and a substantial portion of the purchasing public has a decided preference for engraved stationery over stationery produced by respondent's process or any similar process.

PAR. 10. The use by the respondent of the words "engraving," "process engraving," "engraved" or "process engraved" and the use

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by the respondent of the trade name "Process Engraving Company" either in describing her product or designating her business, in offering for sale or selling her stationery products, was and is calculated to, and had, and now has, the tendency and capacity to, and did, and now does, mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that respondent owns or operates an engraving company, that respondent is in the business of producing and selling engraved stationery, and that the letters, words, or designs contained upon the said stationery offered for sale and sold by respondent were and are engraved and are the result of the genuine engraving process described in paragraph 6 hereof.

PAR. 11. There are among respondent's competitors many who produce engraved stationery products for business and social purposes and who sell such engraved stationery products in commerce as herein described, properly represented and described as engraved stationery. There are others among respondent's competitors who produce stationery products for business and social purposes, and who sell such stationery products in commerce as herein described, but who do not manufacture or sell engraved stationery products, and who do not, by any means or in any manner, hold themselves out, or represent themselves to be, manufacturers of, or dealers in, engraved stationery products.

PAR. 12. As a direct consequence of the aforesaid mistaken and erroneous beliefs, induced by the acts, advertisements and representations of respondent as hereinabove detailed, a number of the consuming public has purchased a volume of respondent's stationery products, with the result that trade has been unfairly diverted to respondent from her aforesaid competitors who do not misrepresent their business status, the character and nature of their respective products or the processes by which they are produced. In consequence thereof, injury has been done, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 13. The aforesaid acts, practices and representations of the respondent as herein alleged, have been and are, all to the prejudice of the public and of respondent's competitors as aforesaid, and constitute unfair methods of competition in commerce and unfair deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 27th day of October 1938,

issued and served its complaint in this proceeding upon Ann W. Carter, an individual, trading as Process Engraving Co., charging her with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of this complaint were introduced by DeWitt T. Puckett, attorney for the Commission, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Walter J. Walsh, Esq., attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in opposition thereto; and the Commission having duly considered the same and being 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 to be drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Ann W. Carter, is an individual who is now, and has been since June 11, 1936, doing business at 694 Market Street, San Francisco, Calif., under the trade name and style Process Engraving Co., and during that period of time has been engaged in the business of printing stationery for social and business purposes, including invitations, announcements, calling cards, letterheads, envelopes, and similar products.

PAR. 2. Since the date of her commencement in business, the respondent has caused the stationery products printed by her, when sold, to be transported from her principal office and place of business in the State of California to the purchasers thereof located in California and in other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her business, respondent now is, and has been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of printing and selling stationery for social and business purposes in commerce among and between the various States of the United States and in the District of Columbia, and is particularly in competition with individuals, firms, and corporations engaged in the business of engraving and selling engraved stationery for social and business purposes in said commerce.

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PAR. 4. In the operation of said business and for the purpose of inducing the purchase of said stationery products, respondent has printed and circulated among purchasers and prospective purchasers circulars, business cards, letterheads, blotters, stickers, memoranda pads, and other advertising literature, bearing the trade name "Process Engraving Company" printed thereon in a conspicuous place. Statements of account sent to purchasers located in various States of the United States and in the District of Columbia also bear the trade name "Process Engraving Company." The respondent places advertisements in which the trade name "Process Engraving Company" is conspicuous in newspapers, magazines and periodicals circulated among the prospective purchasers. In all of said advertising matter, the products manufactured and sold by the respondent are referred to as "process engraving." Typical of the statements made and used by the respondent in the advertising media above described are the following:

Process Engraving Company

Correct Business and Social
Stationery

* * * * *

Christmas Cards—Outstandingly Different—Process Engraving Company. The Oldest and Original.

* * * * *

Christmas Cards in the Modern Motif. Make your selection from the largest assortment in San Francisco, and have them process engraved with your name.

Process Engraving Company.

* * * * *

The Oldest and Original

Process

Engraving Co.

Established 1918

694 Market Street

Telephone Garfield 2913 or 2914

Correct Business and Social Stationery

All of the said statements, together with similar statements not herein set out used by respondent, purport to be descriptive of respondent's business and the products manufactured and sold by her. In all of her various circulars, pamphlets, and other advertising literature, respondent refers to the process by which she produces her products as "engraving." Respondent holds herself and her company out to the public as an "engraver" or "process engraver" and her product as "engraving" or "process engraving."

PAR. 5. The respondent prints invitations, announcements, calling cards, business cards, letterheads, envelopes, Christmas cards, and other social and business stationery by a process in which the letters, words, or designs are type printed on to the stationery by a process whereby after the printing a chemical preparation composed principally of resin is used for the purpose of raising the letters or impressions by what is termed a thermographic process. The printing on the various cards, letterheads, circulars, pamphlets, and other printed matter produced by respondent is first printed with what is known as a special or soft ink on a printing press and while this ink is wet it is dusted with the resin powder and passed through a baking process whereby the chemical fuses with the wet ink in such manner as to produce a raised-letter effect resembling in appearance or simulating genuine engraving. The respondent does not own or operate an "engraving" company and is not engaged in the business of engraving or producing engraved stationery. The letters, words, or designs appearing upon the stationery products manufactured and sold by the respondent are not the result of an engraving process according to the trade and public understanding of the term.

PAR. 6. The word "engraving" as it is used in the graphic arts may be applied either to an engraved intaglio plate upon which letters, words, or designs have been incised or cut, or to the impressions made from such a plate. Such plates are cut or incised by hand, by machine, by etching with acid, by a transfer from other engravings, and by other means, but in all cases the letters, words, or designs so to be produced upon stationery are cut below the surface of the plate. To make impressions from such a plate the ink is applied to the plate, then the plate is wiped so that the ink remains only in the lines cut below the surface. The inked plate is then put upon a piece of stationery or article to be engraved, and pressure is applied sufficient to force the surface of the stationery into the lines cut in the plate, causing the ink in such lines to adhere to the paper on which the impression is to be made.

PAR. 7. The words "engraving" and "engraved" when used in connection with, or descriptive of, business or social stationery, mean, and the trade and consuming public understand, and for many years have so understood, them to mean that the stationery products so being referred to or described contain words, letters, or designs which are raised from the general plane of the stationery surface, and are in relief, and are the result of the application thereto, under pressure, of inked metal plates which have been specially engraved, cut or incised for, and are used in, the production of such stationery by the process more particularly described herein in paragraph 6

hereof. Respondent's product is known in the trade as "raised printing" and not as "process engraving" or "engraving." Many members of the purchasing public cannot distinguish the difference between a product made by the process used by the respondent and a product made by the genuine engraving method as described in paragraph 6 hereof. Respondent's said product looks and feels like genuine engraving, and the difference between the two products is so difficult to ascertain that those in the trade, familiar with both products, must, in many instances, use great care to avoid mistakes in identifying the two products.

PAR. 8. The cost of genuine engraved stationery greatly exceeds the cost of stationery of like stock, grade, or character produced by the process employed by the respondent, as set out in paragraph 5 hereof, or produced by any other printing process, and substantial portion of the purchasing public has a decided preference for engraved stationery over stationery produced by respondent's process or any similar process.

PAR. 9. The use by the respondent of the words "engraving," "process engraving," "engraved," or "process engraved," and the use by the respondent of the trade name "Process Engraving Company" either in describing her product or designating her business in offering for sale or selling her stationery products, had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that respondent owns or operates an engraving company, and that respondent is engaged in the business of producing and selling engraved stationery, and that the letters, words, or designs contained upon the said stationery offered for sale and sold by the respondent were, and are, engraved and are the result of the genuine engraving process described in paragraph 6 hereof.

PAR. 10. There are among respondent's competitors many who produce engraved stationery products which are designed and intended for business and social purposes, and who sell such engraved stationery products, when so produced, and transport them, or cause them to be transported to, into and through other States of the United States, to the purchasers thereof at their respective points of location and who truthfully represent such products to be produced by the engraving process as known to the trade and the public generally. There are among respondent's competitors others who sell in commerce as aforesaid stationery products designed and intended for business and social purposes, but who do not sell engraved stationery products and who do not, by any means or in any manner, represent themselves to be manufacturers of, or dealers in, engraved stationery products,

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and among these latter there are many who produce stationery by the same process as respondent. The use of the word "engraved" to designate and describe stationery products manufactured by the process used by the respondent as herein described, or the use of the word "engraving" to designate and describe said process, has diverted business from genuine engravers and from producers of stationery by processes similar to that used by the respondent, to the respondent and others who use such words in connection with their business and the distribution of their products.

PAR. 11. The acts and practices of the respondent in using the words "engraving," "engraved," and "engravers," in describing her products and in designating her business in advertisements, catalogs, and other advertising literature, and in her general business correspondence, and in using the word "engraving" in her trade name, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that the respondent owns or operates an engraving company and that respondent is in the business of producing and selling engraved stationery and that the letters, works, or designs contained upon said stationery produced and sold by the respondent were, and are, engraved and are the result of the engraving process as known to the trade and public generally, and to induce a number of the consuming public, because of said erroneous belief, to purchase respondent's said products and thereby unfairly to divert trade to the respondent from her competitors in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondent are each and all to the prejudice of the public and to competitors of respondent 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.

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 respondent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and the briefs of counsel for the Commission and for the respondent, and the Commission having made its findings as to the facts, and its

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conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Ann W. Carter, her salesmen, employees, and agents, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution, in commerce, as commerce is defined in the Federal Trade Commission Act, of stationery products, do forthwith cease and desist from:

Using the words "engraving," "process engraving," or any derivative of the word "engrave," alone or in conjunction or combination with any other word or words in her trade name, advertising literature, circulars, catalogs, business signs, letterheads, or correspondence, to designate or describe the stationery products sold and distributed by respondent, or the nature or character of respondent's business, unless and until the respondent produces the stationery products so designated or described by a process which consists essentially in the application of blank stationery to an inked intaglio plate under pressure sufficient to force the surface of the stationery into the letters or designs, which are cut or incised in the plate, so that the ink in such plate adheres to the stationery to form letters, words, characters or designs which are in relief and raised from the general plane of the surface of the stationery.

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

Syllabus

IN THE MATTER OF

COMMONWEALTH PUBLISHING COMPANY

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

Docket 3668. Complaint, Dec. 17, 1938—Decision, Mar. 19, 1940

Where a corporation engaged in selling "Liberty Income Tax Record" and other bookkeeping systems to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar products in commerce as aforesaid; in advertisements in newspapers and periodicals, and through statements and depictions in pamphlets, circulars, and letters circulated between and among the various States and in said District—

- (a) Represented to public that it printed, bound and published its books in building depicted by it in such advertisements, with machinery and skilled binders and printers under its control, through setting forth, in some of its said advertising, series of pictures of exterior and interior views of a large building with purported display sign on one wall thereof reading "publishers, printers, binders of blank books and bookkeeping systems," and with pictures of large printing presses with numerous workmen and showing various operations in the printing and binding of its said book, facts being its said products were printed and bound by independent contractors not under its control, its business was transacted by correspondence entirely and was carried on in office and storeroom of building resembling that pictured and described as above set forth, but few persons were employed by it to fill orders for books sold by it, and it was not a printer or binder of record books and bookkeeping systems, from whom, as such, there are purchasers of such products with preference for dealing directly with printer or binder as securing them, in their belief, better prices, superior merchandise, and other advantages not secured in purchasing such products after having gone through hands of middleman; and
- (b) Represented that Federal and State laws required that books of account be kept on its record books, and that its said books had been approved by State and Federal officials and tax authorities, facts being no such law requires keeping of books of account on its said record books or any particular form or book, and while certain State and Federal officials had written it stating that its said book was useful for keeping records for purpose of income taxation, no such official was permitted to approve any tax record book or bookkeeping system, nor had official approved its said product;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that all said representations were true, and with result, as consequence thereof, that number of consuming public purchased substantial volume of its said books and trade was thereby diverted unfairly to it from its competitors engaged in sale in commerce of products intended, designed and used for purposes for which it recommended its said book, and who truthfully represent the same: