

Syllabus

IN THE MATTER OF
DANIEL A. BRENNAN AND ACCO PRODUCTS, INC.

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

Docket 3196. Complaint, Aug. 5, 1937—Decision, Apr. 23, 1940

Where an individual and a corporation, respectively interested and engaged in manufacture and sale of paper fasteners, as more specifically set forth as follows, namely:

I. Individual who was inventor and to whom letters patent had been issued on a number of paper fasteners, which, however, up to time herein concerned, had not been manufactured or sold under such patents, and who, for some 10 years last past, had pursued practice of coercing and intimidating manufacturers of such fasteners and retail stores throughout the country, and dealing therein, by means of threats of infringement suits in letters to former, and in circular letters to latter, not in good faith with any actual intention of bringing such infringement suits, but for purpose of obstructing, lessening, and destroying competition of persons threatened with corporation first referred to, and the competition of the paper fasteners made and sold by them with those made and sold by such corporation, with which, during course of said period, he had entered into contract to make and sell paper fasteners under all of his existing patents and all patents for such products to be acquired by him in the future; and

II. Corporation which, as above referred to, was engaged in manufacture and sale of paper fasteners and in distribution thereof to purchasers in various other States and in said District of Columbia in substantial competition in commerce, as aforesaid, with others similarly engaged in manufacture and sale in interstate commerce of such products, and which for many years had been principal manufacturer of such products in the United States and which it sold under trade name "Acco"—

- (a) Entered into a conspiracy to restrict, restrain, and suppress competition in manufacture, sale, and distribution of paper fasteners to customers located throughout the several States of the United States and the District of Columbia, by agreeing between themselves to circularize the manufacturers of and retail dealers in such products with letters threatening suit for infringement of patents owned by said individual, and to cooperate with each other in such conspiracy by exchanging information concerning the manufacturers, dealers in, and users of said product; and

Where said individual, pursuant to said conspiracy and in furtherance thereof—

- (b) Sent, on his letterhead and over his signature, not writing in good faith, and without ever bringing any infringement suit against any manufacturer, dealer in or user of paper fasteners, to certain stationers, list of which, as customers of certain competitors, he had requested of and received from said corporation, a letter purporting to be an infringement notice and purporting to recite unfavorable legal position, as regards patent infringements of patents owned by said individual, occupied by the various manufacturers of paper fasteners mentioned in letter in question, and to put

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recipients of such letters on notice that he intended to assert his rights by means of infringement suits;

- (c) Circularized and mailed to dealers in paper fasteners, somewhat later letter, over his signature, and not in good faith and with no intention of bringing any infringement suits and without ever, up to time of his death, bringing any suit against concern particularly referred to or any dealer in or user of the "Favorite Fastener" made by said concern, but for the purpose of enhancing sales of products made by corporation herein involved and of hindering and harrassing competitors therewith, which letter purported to be infringement notice relative to "Favorite Fastener" made and sold by said concern and threatened infringement suit, and which letter was not confined to customers of said concern, but sent to all known office supply dealers in the United States; and
- (d) Advised such persons as made inquiries as the result of said letters as sent out by him in May and June of year in question, that the only paper fastener on the market that could be safely bought without likelihood of patent litigation was the "Acco" fastener made by aforesaid corporation;

With the effect that the result of the acts and conduct of said individual and said corporation pursuant to such conspiracy, up to the time of the recent death of said individual, was to tend to substantially lessen, restrict, restrain, and suppress competition in interstate sale of paper fasteners throughout the several States and, during period in question, to hinder and prevent competitors of said corporation from selling their products to stationers and other retailers of paper fasteners throughout the United States and, during said period, to create a monopoly in said corporation in manufacture and sale in commerce aforesaid of such products:

Held, That such acts and practices, as above set forth, were, up to the time of said individual's death as above set forth, all to the prejudice of competitors of said corporation and of the public, and had a dangerous tendency to and did actually hinder and prevent competition in sale of paper fasteners in commerce, and unreasonably restrained interstate commerce therein, and constituted unfair methods of competition.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Reuben J. Martin for the Commission.

Müller, Gorham, Westcott & Adams, of Chicago, Ill., for Daniel A. Brennan.

Church & Church, of Washington, D. C., for Acco Products, Inc.

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 Daniel A. Brennan, an individual, and Acco Products, Inc., a corporation, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest,

hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, Daniel A. Brennan, is an individual engaged in the practice of patent law, and maintains his office in Room 1452, 10 South La Salle Street in the city of Chicago, within the State of Illinois. Said respondent, Daniel A. Brennan, is an inventor and letters patent have issued to him on a number of paper fasteners. Said respondent does not manufacture or sell any of the products for which he has received patents, and at the present time none of such products are being manufactured and sold under said patents.

PAR. 2. Said respondent, Acco Products, Inc., is a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at Thirty-ninth Avenue and Twenty-fourth Street, Long Island City, within said State of New York. Said respondent is now, and for a long period of time, to wit: For more than 5 years last past, has been engaged in the manufacture and sale of paper fasteners and in the distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Said respondent Acco Products, Inc., causes said paper fasteners when sold by it to be transported to the purchasers thereof located in the State of New York, in various other States of the United States and in the District of Columbia. There is now, and for more than 5 years last past has been, a constant current of trade and commerce by said respondent in said paper fasteners between and among the various States of the United States and the District of Columbia. In the course and conduct of its said business the said respondent, Acco Products, Inc., is now, and for more than 5 years last past has been in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with sundry other individuals, firms, partnerships, and corporations likewise engaged in the sale of paper fasteners. Said respondent, Acco Products, Inc., sells its paper fasteners under the trade name "Acco" and has for many years been the principal manufacturer of paper fasteners in the United States.

PAR. 3. Said respondent, Daniel A. Brennan, obtained his first patent on paper fasteners in the year 1930, and since that time has obtained five additional patents for paper fasteners. In the spring of 1936, said respondent, Daniel A. Brennan, entered into an agreement with respondent Acco Products, Inc., by which he licensed said respondent, Acco Products, Inc., to manufacture and sell paper fasteners under all of his existing patents and under all patents for paper fasten-

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ers to be acquired by him, the said respondent, Daniel A. Brennan, in the future, but to the present date respondent, Acco Products, Inc., has not manufactured or sold any paper fastener under any patent issued to or owned by said respondent Daniel A. Brennan.

PAR. 4. Said respondent, Daniel A. Brennan, since the year 1930, has pursued a practice of coercing and intimidating manufacturers of paper fasteners and retail stores throughout the country dealing in paper fasteners by means of threats of infringement suits, which said threats were contained in letters to manufacturers of paper fasteners and in circular letters mailed to retail dealers in paper fasteners generally. None of said threats of infringement were made in good faith or with any actual intention of bringing any such said infringement suits, but they were made for the purpose of obstructing, lessening, and destroying the competition of said persons threatened, with respondent, Acco Products, Inc., and the competition of the paper fasteners manufactured and sold by them with the paper fasteners manufactured and sold by respondent Acco Products, Inc.

PAR. 5. Said respondent, Daniel A. Brennan and said respondent, Acco Products, Inc., acting in cooperation with each other for more than 1 year last past and particularly since June 9, 1936, have entered into an understanding, agreement, combination, or conspiracy among and between themselves to restrict, restrain, and suppress competition in the manufacture, sale, and distribution of paper fasteners to customers located throughout the several States of the United States and the District of Columbia as aforesaid, by agreeing to circularize the manufacturers of and retail dealers in paper fasteners by means of letters threatening suit for infringement of patents owned by said respondent, Daniel A. Brennan, and to cooperate with each other by exchanging information concerning the manufacturers, dealers in, and users of paper fasteners.

PAR. 6. Said individual respondent, Daniel A. Brennan, and said corporate respondent, Acco Products, Inc., in furtherance of their aforesaid understanding, agreement, combination, or conspiracy, prepared and sent to all manufacturers of paper fasteners and to all known dealers in paper fasteners, a letter dated May 5, 1936, on the stationery and over the signature of said respondent, Daniel A. Brennan, which said letter purported to be an infringement notice and which purported to recite the position as regards infringements occupied by the various manufacturers of paper fasteners and to put the recipient on notice that said respondent, Daniel A. Brennan, intended to assert his rights by means of infringement suits. Thereafter, and subsequent to the making of the agreement between said respondents whereby said respondent, Acco Products, Inc., was

licensed to manufacture paper fasteners under patents held or to be acquired by said respondent, Daniel A. Brennan, said respondents, acting in cooperation with each other, circularized the dealers in paper fasteners by means of a letter dated June 10, 1936, over the signature of said respondent, Daniel A. Brennan, which said letter purported to be an infringement notice relative to "Favorite Fastener" manufactured and sold by Cook and Cobb and threatened to bring suit for infringement. The said infringement notices were not confined to customers of Cook and Cobb but were sent to all known office-supply dealers in the United States. Said letters were not mailed in good faith by respondent who had no intention of bringing any infringement suits but were mailed for the purpose of enhancing the sales of the products manufactured by respondent, Acco Products, Inc., and of hindering and harassing the competitors of said Acco Products, Inc. In truth and in fact, no infringement suits against any manufacturer, dealer, or user of paper fasteners has ever been brought by said respondent Daniel A. Brennan.

PAR. 7. The result of the acts and conduct of said respondent, Daniel A. Brennan, and of the said respondent, Acco Products, Inc., as hereinbefore set out in paragraphs 4, 5, and 6, has been and now is to unnaturally tend to substantially lessen, restrict, restrain, and suppress competition in the interstate sale of paper fasteners throughout the several States of the United States, and to enhance the prices of said paper fasteners above the prices which have theretofore prevailed and which would prevail in normal, natural, and open competition between said respondent, Acco Products, Inc., and other manufacturers of paper fasteners, and also to tend to create a monopoly in said respondent, Acco Products, Inc., in the manufacture and sale of paper fasteners in interstate commerce.

PAR. 8. The foregoing alleged acts and practices of the said respondents, Daniel A. Brennan and Acco Products, Inc., have been and still are to the prejudice of the buying public generally and to purchasers of paper fasteners in particular and of their competitors as aforesaid and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER DISMISSING COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 5, 1937, issued, and on August 6, 1937, served its complaint in this proceeding upon respondent.

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ents, Daniel A. Brennan and Acco Products, Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Reuben J. Martin, attorney for the Commission. Thereafter the Commission, by order entered herein, granted respondents' motions for permission to withdraw said answers and to substitute therefor answers admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answers were duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint, said substitute answers and the testimony and other evidence, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Daniel A. Brennan, was prior to his death on February 15, 1940, engaged in the practice of patent law and maintained his office at 10 South La Salle Street in the city of Chicago within the State of Illinois. Said respondent, Daniel A. Brennan, was an inventor and letters patent were issued to him on a number of paper fasteners. The said respondent, Brennan, did not manufacture or sell any of the products on which letters patent were issued to him and at the present time none of such products are being manufactured and sold under said patents.

PAR. 2. The respondent, Acco Products, Inc., is a corporation organized and existing under the laws of the State of New York. It maintains its office and principal place of business at Thirty-ninth Avenue and Twenty-fourth Street, Long Island City, N. Y. The said respondent, Acco Products, Inc., for more than 5 years has been, and is now, engaged in the manufacture and sale of paper fasteners and in the distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Said respondent, Acco Products, Inc., when said paper fasteners are sold by it, causes them to be transported to the purchasers thereof, located in the State of New York, in various other States of the United States and in the District of Columbia. There is now, and for more than 5 years last past has been, a constant current of trade in commerce, by said respondent in said paper fasteners, between and among the

various States of the United States and the District of Columbia. Said respondent, Acco Products, Inc., in the course and conduct of its said business, is now, and for more than 5 years last past has been, in substantial competition in commerce between and among the various States of the United States and in the District of Columbia, with other individuals, firms, partnerships, and corporations who are similarly engaged in the manufacture and sale in interstate commerce of paper fasteners. Said respondent, Acco Products, Inc., sells its paper fasteners under the trade name "Acco" and said respondent has for many years been the principal manufacturer of paper fasteners in the United States.

PAR. 3. Said respondent, Brennan, from the year 1930 up to the time of his death on February 15, 1940, pursued a practice of coercing and intimidating manufacturers of paper fasteners and retail stores throughout the country dealing in paper fasteners by means of threats of infringement suits, which said threats were contained in letters to manufacturers of paper fasteners and in circular letters mailed to retail dealers in paper fasteners generally. None of said threats of infringement were made in good faith or with any actual intention of bringing any such said infringement suits, but they were made for the purpose of obstructing, lessening, and destroying the competition of said persons threatened with respondent, Acco Products, Inc., and the competition of the paper fasteners manufactured and sold by them with the paper fasteners manufactured and sold by respondent Acco Products, Inc.

PAR. 4. Respondent, Brennan, entered into a contract effective March 21, 1936, with the respondent, Acco Products, Inc., by which he licensed said Acco Products, Inc., to manufacture and sell paper fasteners under all of his existing patents and all patents for paper fasteners to be acquired by said respondent, Brennan, in the future. Thereafter, the said respondent, Brennan, and the said respondent, Acco Products, Inc., entered into a conspiracy to restrict, restrain, and suppress competition in the manufacture, sale, and distribution of paper fasteners to customers located throughout the several States of the United States and the District of Columbia by agreeing between themselves to circularize the manufacturers of and retail dealers in paper fasteners with letters threatening suit for infringement of patents owned by said respondent Brennan; and to cooperate with each other in this conspiracy by exchanging information concerning the manufacturers, dealers in, and users of paper fasteners. Pursuant to said conspiracy and in furtherance thereof, respondent, Brennan, requested of and received from respondent, Acco Products, Inc., a list of stationers who were customers of certain competitors and under

date of May 5, 1936, said respondent, Brennan, sent out to said stationers on his letterhead and over his signature a letter purporting to be an infringement notice and purporting to recite the unfavorable legal position as regards patent infringements of said patents owned by respondent, Brennan, occupied by the various manufacturers of paper fasteners mentioned in said letter and purporting to put the recipients of said letters on notice that said respondent, Brennan, intended to assert his rights by means of infringement suits. Said letter was not written in good faith and no infringement suit was ever brought by said respondent, Brennan, against any manufacturer, dealer in, or user of paper fasteners.

PAR. 5. Pursuant to the conspiracy set out in paragraph 4 hereof, the respondent, Brennan, using the list furnished him by the respondent, Acco Products, Inc., circularized the dealers in paper fasteners by means of a letter dated June 10, 1936, over his signature which said letter purported to be an infringement notice relative to "Favorite Fastener" manufactured and sold by Cooke & Cobb and threatened to bring suit for infringement. Said letters were not confined to customers of Cooke & Cobb but were sent to all known office supply dealers in the United States. Said letters were not mailed in good faith by the respondent, Brennan, who had no intention of bringing any infringement suits and who up to the time of his death on February 15, 1940, never brought any suit against Cooke & Cobb or against any dealer in or user of the "Favorite Fastener" but were mailed for the purpose of enhancing the sales of the products manufactured by respondent, Acco Products, Inc., and of hindering and harassing the competitors of said respondent Acco Products, Inc.

PAR. 6. The respondent, Brennan, advised such persons as made inquiries, as the result of his letters of May 5, 1936, and June 10, 1936, that the only paper fastener on the market that could be safely bought without the likelihood of patent litigation was the Acco fastener manufactured by the respondent Acco Products, Inc.

PAR. 7. The result of the acts and conduct of the respondent, Brennan, and of the respondent, Acco Products, Inc., pursuant to the conspiracy hereinbefore set-out up to the time of the death of said respondent, Brennan, on February 15, 1940, was to tend to substantially lessen, restrict, restrain, and suppress competition in the interstate sale of paper fasteners throughout the several States of the United States and during said period to hinder and prevent said competitors of Acco Products, Inc., from selling their products to stationers and other retailers of paper fasteners throughout the United States. Said acts also tended during said period to create

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a monopoly in the respondent, Acco Products, Inc., in the manufacture and sale of paper fasteners in interstate commerce.

CONCLUSION

The acts and practices of the respondents as herein set forth were up to the time of the death of the respondent, Brennan, on February 15, 1940, all to the prejudice of competitors of respondent, Acco Products, Inc., and of the public; had a dangerous tendency to and did actually hinder and prevent competition in the sale of paper fasteners in commerce within the intent and meaning of the Federal Trade Commission Act; did unreasonably restrain interstate commerce in paper fasteners and constituted unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

In view of the foregoing findings as to the facts and conclusion, *It is ordered*, That said complaint be, and the same hereby is, dismissed.

ORDER DISMISSING COMPLAINT

This matter coming on to be heard by the Commission upon the record, and it appearing that respondent, Daniel A. Brennan, died on February 15, 1940, and the Commission having duly considered the matter, and being fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

IN THE MATTER OF
MCKINLEY-ROOSEVELT COLLEGE OF ARTS AND
SCIENCES

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

Docket 3571. Complaint, Aug. 31, 1938—Decision, Apr. 23, 1940

Where a corporation engaged in sale of courses of home study instruction in various subjects, including education, writing, psychology, theology, chemistry, business and commerce, law, agriculture, engineering, accounting, advertising, sales management, and many other subjects, and in sending lesson material and text books in the respective courses sold by it to the purchasers thereof in various other States, from the apartment in which was carried on the entire business of the school and which was occupied as a residence by the individual and his wife who were president and secretary-treasurer thereof—

- (a) Made use of words "College" and "University" as respectively included in corporate and former corporate name under which it did business, and displayed said names, as case might be, on catalogs descriptive of the various courses and subjects taught by it, and on letterheads and other printed matter, and in advertisements in periodicals of general circulation in various States set forth, and represented thereby that it offered home study courses of instruction leading to degrees in art, sciences, philosophy, education, and a large number of other branches of learning, at low cost and on easy terms; Facts being school conducted by it as aforesaid lacked all the requirements with respect to equipment and educational facilities which would entitle it to be classified as a college or university, and, while it might be possible for a student to take by correspondence one-half of required work leading to a degree, all accredited educational institutions of higher learning require that at least 2 years of study of the full 4-year course leading to a degree be by actual attendance in classes, and degrees conferred by it were not recognized by such institutions;

With result that, through such false and misleading use of words "College" and "University," there was created in minds of members of public desiring to obtain an education by correspondence, erroneous impression that it was in fact conducting a college or university, as generally accepted and understood as meaning educational institutions of higher learning, with power to confer degrees, resident students, and resident faculty of learned persons acting as instructors in various branches of learning, including the liberal arts and sciences, and, in case of universities, one or more special branches of learning such as theology, law and medicine; and

- (b) Set forth in its catalogs names of the officers of administration and faculty members, followed respectively by a series of letters indicative of and representing various academic degrees, such as those conferred in recognition of academic work or scholastic attainment by recognized colleges and universities, and thereby represented to prospective purchasers of its courses of study that persons thus named and referred to therein as members of its faculty possessed degrees which had been granted them by recognized colleges or