

Syllabus

IN THE MATTER OF

A. F. DUVERGER, DOING BUSINESS AS NATIONAL
DISTRIBUTORS AND INCOME AUDIT SERVICECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3616. Complaint, Sept. 30, 1933—Decision, Jan. 23, 1941*

Where an individual engaged in compilation of his "Income Audit Service," comprising a bookkeeping, accounting, or business record system consisting of bound record for recording business transactions, and including so-called free advisory service in which, upon request, he gave advice concerning Federal income tax, social security and accounting questions, and agreement to aid and assist in the preparation and submission of the purchaser's Federal income tax return and to indicate thereon all purchaser's deductions, allowances, exemptions and credits, and in sale and distribution of said "Income Audit Service" to purchasers thereof in other States and in the District of Columbia, upon a down-payment and c. o. d. balance basis, through representatives, salesmen, agents, and canvassers, and through the mails, in active and substantial competition with others engaged in sale and distribution of like or similar systems and service in commerce as aforesaid, and including many who sell and distribute their systems without making any representation that same are offered or sold by Government or that their purchase by user is compulsory or required by law, or that heavy penalties will accrue if person solicited fails to buy same—

- (a) Represented, directly and indirectly, and impliedly and inferentially, through the mails and through methods employed by his representatives, etc., under his direction, control and supervision, and particularly to small businessmen and including immigrants and poorly educated people, that his representatives, salesmen, agents and canvassers were officers, agents, or representatives of the United States Government and, in particular, of the Income Tax Unit of the Department of the Treasury, and that the purchase and use of a bookkeeping, accounting or business record system, and more particularly, of his said "Income Audit Service", was necessary or required under laws of the United States or under rules, regulations or orders of some department or agency thereof, and that his said "Income Audit Service" emanated from or was sold and distributed under the auspices of United States Government or aforementioned Income Tax Unit; and
- (b) Represented that his said "Income Audit Service" was the only bookkeeping, accounting or business record system approved by United States Government or said unit, and that all other systems or services in use must be removed and replaced by his said service, and that prospective purchasers who failed to purchase and use his said service or who did not comply with requests or demands of his representatives, etc., as made by them in connection with sale of his said service, would, as result of

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such failure to purchase and use said service and of non-compliance with demands of such representatives, etc., subject themselves to arrest or imprisonment;

Facts being, his said representatives, agents, salesmen and canvassers were not officers or agents of, nor in any manner connected with, the United States Government, the Income Tax Unit of the Treasury Department, or any other department or agency of said Government, his "Income Audit Service" was not necessary or required under laws of the United States or under rules, regulations, or orders of any department or agency of the Government, and it did not emanate from, nor was it sold and distributed under the auspices of, the United States Government or any department or agency thereof and no other bookkeeping, accounting or business record system purchased or in use needed to be removed and replaced by his said service, prospective purchasers who did not purchase and use it or comply with request or demand made by his representatives, etc., in connection with sale of such service, would not be subject to arrest or imprisonment, and two canvassers representing him had been convicted of impersonating an officer of the Government while attempting to make sales of said service, and he had received many complaints that his canvassers left the impression with person solicited to subscribe to said service that they were representatives of the Government; With capacity and tendency, through such false and misleading representations made by him and his representatives in sale and distribution of his said service, to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that all of said representations were true, and with result, as direct consequence of such belief, that number of public purchased substantial volume of his said service, with consequence that trade was unfairly diverted to him from competitors selling and distributing like or similar business record systems who truthfully represent the same; to the injury of competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors, and constituted unfair methods of competition in commerce, and unfair and deceptive acts and practices therein.

Before *Mr. John W. Addison* and *Mr. Miles J. Furnas*, trial examiners.

Mr. B. G. Wilson for the Commission.

Mr. Joseph C. Turco, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that A. F. Duverger, an individual, doing business under the names and styles of National Distributors and Income Audit Service, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would

be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, A. F. Duverger, is an individual doing business under the names and styles of National Distributors and Income Audit Service, with his principal place of business formerly located at 927 Fifteenth Street NW., Washington, D. C., and now located at 205 Washington Avenue, Riverdale, Md. Said respondent is engaged in the compilation and sale of an Income Audit Service and caused and causes said Service, when sold, to be transported from his principal place of business in Washington, D. C., and Riverdale, Md., to the purchasers thereof located in States of the United States other than the State of Maryland, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade and commerce in the said Income Audit Service sold and distributed by him in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, respondent is in active and substantial competition with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution of like or similar Services or products in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 3. Respondent's Income Audit Service comprises a bookkeeping, accounting, or business record system consisting of a bound record for recording business transactions. Included in respondent's said Income Audit Service is a free advisory service, wherein respondent, upon request, purports to advise concerning Federal Income Tax, Social Security, and Accounting questions.

Respondent, through said Income Audit Service, further agrees to aid and assist in the preparation and submission of purchaser's Federal Income Tax return and to indicate thereon all proper deductions, allowances, exemptions, and credits.

Respondent's Income Audit Service is sold and distributed through the medium of the United States mails and through the means of representative salesmen, agents, and canvassers.

PAR. 4. In the course and conduct of respondent's business, and for the purpose of inducing the purchase of said Income Audit Service, respondent directly, indirectly, impliedly, and inferentially, through the medium of the United States mails and through the means and by the use of methods employed by appointed representative salesmen, agents, and canvassers under his direction, control, and supervision, has made many representations to prospective purchasers in the

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solicitation and sale of the said Income Audit Service, among which are the following:

1. That respondent's representative salesmen, agents, and canvassers are officers, agents, or representatives of the United States Government and in particular, of the Income Tax Unit, Bureau of Internal Revenue, U. S. Department of the Treasury.

2. That the purchase or use of a bookkeeping, accounting or business record system and, in particular, respondent's Income Audit Service is approved, necessary, required or compulsory under the laws, regulations or orders of the U. S. Government and, in particular, of the Unit, Bureau, and Department aforementioned.

3. That respondent's Income Audit Service emanates from or is sold and distributed under the auspices of the U. S. Government or the aforementioned Unit, Bureau or Department.

4. That respondent's Income Audit Service is the only bookkeeping, accounting or business record system approved, necessary, required or compulsory under the laws, rules, regulations, or orders of the United States Government, the particular unit, bureau, and department aforementioned, and that all other systems or services in use must be removed and replaced by respondent's said Income Audit Service.

5. That prospective purchasers who fail to purchase and use or who do not comply with the requests or demands of respondent's representative salesmen, agents, or canvassers as made in connection with the solicitation, attempted sale, or sale of respondent's Income Audit Service, will as a direct result of such failure to purchase or use or of such noncompliance, be reported, arrested, fined or imprisoned, by respondent's said representative salesmen, agents, or canvassers or subjected to investigation and penalties by the United States Government or the particular unit, bureau, and department aforementioned.

PAR. 5. The said representations as made by respondent in the manner and method as hereinabove set out in paragraph 4 are false, misleading, and untrue.

In truth and in fact, respondent's representative salesmen, agents, and canvassers are not officers or agents nor are they in any manner whatsoever connected with or representative of the United States Government or, in particular, of the Income Tax Unit, Bureau of Internal Revenue, United States Department of the Treasury. Respondent's Income Audit Service is not approved, necessary, required, or compulsory under the laws, rules, regulations, or orders of the United States Government, or the particular unit, bureau, and department aforementioned. Respondent's Income Audit Service does not emanate from, nor is it sold and distributed under the

auspices of the said United States Government, unit, bureau, or department aforementioned. No other bookkeeping, accounting or business record system purchased or in use need be removed and replaced by said Income Audit Service, as represented by respondent. Prospective purchasers who do not purchase, use or comply with the requests or demands made by respondent's representative salesmen, agents, and canvassers in connection with the solicitation, attempted sale or sale of respondent's Income Audit Service will not, as a result of such noncompliance or failure to purchase and use, be reported, arrested, fined or imprisoned by respondent's representative salesmen, agents, or canvassers or subjected to investigation and penalties by the United States Government or any of its departments, bureaus, or units, as represented and indicated by the respondent.

PAR. 6. There are among respondent's competitors, as described in paragraph 2 herein, many who sell and distribute like or similar services or products who do not misrepresent their respective services or products or matters pertaining thereto.

PAR. 7. Each and all of the false and misleading representations made by respondent in the sale and distribution of his Income Audit Service as hereinabove set out have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations are true. As a direct result of this erroneous and mistaken belief a number of the public have purchased a substantial volume of the respondent's product with the result that trade has been unfairly diverted to respondent from competitors engaged in selling and distributing like or similar services or products who truthfully represent the same.

As a 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. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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

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ent, A. F. Duverger, an individual, doing business under the names and styles of National Distributors and Income Audit Service, charging him 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 said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint and in opposition thereto were introduced before examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); 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. Respondent, A. F. Duverger, is an individual doing business under the names and styles of National Distributors and Income Audit Service, with his principal place of business formerly located at 927 Fifteenth Street NW., Washington, D. C., and now located at 3402 Rhode Island Avenue, Mt. Rainier, Md. Said respondent is engaged in the compilation and sale of a business record system and service, known as, and sold under the name, Income Audit Service, and caused and causes said service, when sold, to be transported from his principal place of business in Washington, D. C., and Mt. Rainier, Md., to the purchasers thereof located in States of the United States other than the State of Maryland and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said income audit service in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, respondent is in active and substantial competition with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution of like or similar systems and service in commerce among and between the various States of the United States and in the District of Columbia. There are many of these competitors who sell and distribute their systems without any representation that their

systems are being offered for sale or sold by the Government, or that their purchase by the user is compulsory or is required by law, or that heavy penalties will accrue if the person solicited fails to buy their said systems.

PAR. 3. Respondent's Income Audit Service comprises a bookkeeping, accounting, or business record system consisting of a bound record for recording business transactions. Included in respondent's said Income Audit Service is a so-called free advisory service, wherein respondent, upon request, gives advice concerning Federal income tax, social security, and accounting questions. Respondent through said income audit service further agrees to aid and assist in the preparation and submission of the purchaser's Federal income tax return and to indicate thereon all proper deductions, allowances, exemptions, and credits. Respondent's Income Audit Service is sold through the means of representatives, salesmen, agents, and canvassers; and distributed through the medium of the United States mails. The price for a 1-year subscription to respondent's Income Audit Service is \$7.50, of which \$3 is paid to the canvasser at the time he takes the order. The \$4.50 balance is collected by the postal authorities on delivery of said service. During the year 1937 respondent sold his said service to about three thousand subscribers.

PAR. 4. Respondent, in the course and conduct of his business, and for the purpose of inducing the purchase of said Income Audit Service, directly, indirectly, impliedly and inferentially, through the medium of the United States mails and through the means and by the use of methods employed by appointed representatives, salesmen, agents, and canvassers under his direction, control, and supervision, has made many representations to prospective purchasers, particularly to small businessmen, including immigrants and poorly educated people, among which are the following:

1. That respondent's representatives, salesmen, agents, and canvassers are officers, agents, or representatives of the United States Government and, in particular, of the Income Tax Unit of the Department of the Treasury.

2. That the purchase and use of a bookkeeping, accounting or business record system, and, more particularly, of respondent's said Income Audit Service, is necessary or required under the laws of the United States or under the rules, regulations, or orders of some department or agency thereof.

3. That respondent's Income Audit Service emanates from or is sold and distributed under the auspices of the United States Government or the aforementioned Income Tax Unit.

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4. That respondent's said Income Audit Service is the only bookkeeping, accounting, or business record system approved by the United States Government or said Income Tax Unit, and that all other systems or services in use must be removed and replaced by respondent's said Income Audit Service.

5. That prospective purchasers who fail to purchase and use respondent's said Income Audit Service or who do not comply with the requests or demands of respondent's representatives, salesmen, agents, or canvassers as made by them in connection with the sale of respondent's said Income Audit Service will, as a result of such failure to purchase and use said service and of noncompliance with the demands of such representatives, salesmen, agents or canvassers subject themselves to arrest or imprisonment.

PAR. 5. The said representations as made by respondent in the manner and method as hereinabove set out in paragraph 4 are false, misleading, and deceptive. The Commission finds that respondent's representatives, agents, salesmen, and canvassers are not officers or agents of, nor are they in any manner connected with, the United States Government, the Income Tax Unit of the Department of the Treasury, or any other department or agency of the United States Government. Respondent's said Income Audit Service is not necessary or required under the laws of the United States or under the rules, regulations or orders of the Income Tax Unit of the Department of the Treasury or any other department or agency of the United States Government. Respondent's Income Audit Service does not emanate from, nor is it sold and distributed under the auspices of, the United States Government, or any department or agency thereof. In fact, no other bookkeeping, accounting or business record system purchased or in use need be removed and replaced by respondent's said Income Audit Service. Prospective purchasers who do not purchase and use Income Audit Service or comply with the request or demand made by respondent's representatives, salesmen, agents and canvassers in connection with the sale of respondent's Income Audit Service will not, as a result of such failure to purchase and use said Income Audit Service or comply with the request or demand of said representatives, salesmen, agents, and canvassers, be subject to arrest or imprisonment.

PAR. 6. Two canvassers representing respondent have been convicted of impersonating an officer of the United States Government while attempting to make sales of respondent's Income Audit Service, and respondent has received many complaints that his canvassers leave the impression with the person solicited to subscribe to said service that they are representatives of the United States Government.

PAR. 7. All of the representations made by respondent and his representatives in the sale and distribution of his Income Audit Service are false and misleading, and, as described above, have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As a direct result of this erroneous and mistaken belief, a number of the public have purchased a substantial volume of respondent's said Income Audit Service, with the result that trade has been unfairly diverted to respondent from competitors, engaged in selling and distributing like or similar business record systems, who truthfully represent the same. As a 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.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before examiners of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by counsel for the Commission (no brief having been filed on behalf of the respondent and oral argument not having been requested) and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, A. F. Duverger, an individual, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a so-called income audit service, sold and distributed under the name Income Audit Service, or any bookkeeping, accounting or business record system whether sold under the name Income Audit Service or any other name in commerce, as commerce

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is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondent's agents, salesmen or canvassers are officers, agents, or representatives of, or that they are in any manner connected with, the United States Government or any department or agency thereof.

2. That respondent's bookkeeping, accounting, business record system or income audit service is necessary or required under the laws of the United States or under the rules, regulations, or orders of any department or agency thereof; or that all other income tax record systems or services must be replaced by respondent's said system or service.

3. That respondent's bookkeeping, accounting, business record system, or income audit service is produced by or sold and distributed under the direction of the United States Government or any department or agency thereof.

4. That prospective purchasers who fail to purchase and use respondent's said income audit service or record keeping system will be subject to arrest or imprisonment because of their failure to purchase and use said services.

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

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IN THE MATTER OF
SCIENTIFIC MANUFACTURING COMPANY, INC., AND
HOWARD J. FORCE, INDIVIDUALLY AND AS PRESIDENT THEREOF

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

Docket 3874. Complaint, Aug. 18, 1939—Decision, Jan. 23, 1941

Where a corporation, which was a closed one wholly owned by a certain individual and family, and said individual, who was its president and controlled and directed its activities, practices, and policies, and used same as an instrumentality and means whereby and through which he conducted the business and performed and caused to be performed the acts and things below described, engaged in writing and publishing, for sale and distribution, two pamphlets which were designated and entitled by them "Poisons Formed By Aluminum Cooking Utensils" and "Are You Heading For 'The Last Round-Up'?" and which were devoted to an exposition of the claimed dangers attendant in use of aluminum utensils for preparation and storage of foods for human consumption, and the claimed deleterious effects which result from eating foods prepared or stored in such utensils, and which pamphlets, offered, sold, and distributed by them through and by the mails and otherwise to the public and to various manufacturers, distributors, dealers, and salesmen of cooking and storage utensils made of materials other than, and competitive with, utensils made of aluminum, as used and distributed to public by them and parties referred to, had induced and were likely to induce prospective purchasers and purchasers to buy cooking and storage utensils made of materials other than and competitive with aluminum utensils—

- (a) Represented and caused to be represented, among other things, that aluminum is a poisonous metal and that use of aluminum utensils for preparation, cooking, or storage of foods is unsafe, deleterious, disease producing, poisonous, death dealing, and otherwise dangerous to health because of the aluminum imparted to foods during such processes and resulting absorption and accumulation of such metal in the system of the consumer of foods so prepared, cooked or stored;
- (b) Represented, further, as aforesaid, that aluminum utensils are manufactured of a soft metal, that such utensils easily become corroded and pitted when used for cooking and tend to provide lodgment for food particles which operate as culture media for bacteria and spores, both poisonous and otherwise; and
- (c) Represented, as aforesaid, that the consumption of food prepared, cooked or stored in aluminum utensils will cause cancer, Bright's Disease, diabetes, liver trouble, indigestion, constipation, ulcers, carbuncles, nervousness, and death from poisoning;

Facts being extensive scientific investigations have failed to disclose any evidence, that food prepared or stored in aluminum utensils is unsafe, deleterious, disease producing, poisonous or otherwise dangerous to health, substance in