

Syllabus

IN THE MATTER OF

CLARENCE B. COUNCIL, TRADING AS STATISTICAL RE-
SEARCH BUREAU, AND METALS AND MINERALS RE-
SEARCH BUREAU.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3572. Complaint, Dec. 14, 1940¹—Decision, Feb. 24, 1942*

Where an individual, engaged in the compilation and interstate sale and distribution of a publication known as "The Mining Manual," in competition with a concern which compiled and published its "The Mines Register" of information concerning mining and mining companies—

(a) Represented, through statements published and circulated to subscribers of "The Mines Register" and to others, that his said "Manual" was published periodically throughout the year, thereby giving complete and up-to-date information concerning various companies and their activities, and was superior to said competitive "Register," that latter was not an authentic and high-grade publication, and that information and material therein contained were out of date;

When as a matter of fact his own publication comprised only the first 200 pages of a perpetual manual which he never completed, and of which section 1 of part 1 did not appear for nearly a year after the making of his said representations, to be followed eight months later by section 2, and in the following year by section 3, the last; and said "Mines Register," published from time to time, gave as complete information as was obtainable concerning mining companies, organizations, equipment, etc., and was considered to be authentic, reliable, and up-to-date;

(b) Represented, directly and by implication, through circular letters, that he had been engaged in publishing books of mining information since 1925, and that his said "Manual" was generally recognized as of preeminent merit, constituting a standard reference work, and the only up-to-date information service on mines published, containing all the information with respect to mining companies contained in the aforesaid "Register," and ready for immediate delivery;

The facts being he had not been engaged in business as claimed; his said "Manual" was not generally recognized as a standard reference work, or the only one publishing up-to-date information service on mines; and said "Register" contained mining information not included in his "Manual," no part of which was ready for delivery until almost a year later, as noted above;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true; that said "Register" was not authentic, reliable and up-to-date, and that his "Manual" was a superior product, whereby purchasing public was

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induced to buy his publication in preference to said "Register" and others, and trade was thereby diverted unfairly to him from his competitors:
Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition.

Before *Mr. Charles P. Vincini*, *Mr. Edward E. Reardon* and *Mr. Miles J. Furnas*, trial examiners.

Mr. Randolph W. Branch for the Commission.

AMENDED 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 Clarence B. Council, individually, and trading as Statistical Research Bureau, and as Metals and Minerals Research Bureau, 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Clarence B. Council, is an individual, who for some time prior to October 1, 1937, conducted a business under the trade name of Statistical Research Bureau, at Room 523, 315 Montgomery Street, San Francisco, Calif. Since that date respondent has been, and is now, conducting said business under the trade name of Metals and Minerals Research Bureau, at Room 300 Flatiron Building, 9 Sutter Street, San Francisco, Calif. For several years last past the respondent has been engaged in the business of compiling and publishing, and in selling and distributing in commerce as herein set out a publication known as The Mining Manual. The purpose of said publication is to disseminate to the subscribers thereto certain mining information and to acquaint them with information relative to the activities of mining companies. The respondent, operating under either one or the other of said trade names, causes said publication, when sold, to be distributed by mail and otherwise from his places of business in San Francisco, Calif., to various purchasers and subscribers located at points in the various States of the United States other than California. Respondent thus maintains, and has maintained for more than one year last past, a course of trade and commerce in said publication between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business, the respondent has been, and is now, in competition with other individuals,

and with firms and corporations, likewise engaged in compiling and publishing, and in selling and distributing publications of a similar nature and character, or designed and intended for similar usage, in commerce among and between the various States of the United States and in the District of Columbia who do not unfairly disparage the competing publications of their competitors.

PAR. 3. Among the respondent's aforesaid competitors is the Atlas Publishing Co., Inc., a corporation, having its principal place of business in the city of New York, State of New York. This concern compiles, publishes, sells, and distributes to subscribers located throughout the various States of the United States and in the District of Columbia, a book or publication known as the Mines Register. This publication is designed for the purpose of, and does, disseminate to subscribers thereto intelligence and information with respect to mining, mining companies, and their activities in general.

PAR. 4. In the course and conduct of his business, and for the purpose of inducing the purchase of his publication, the Mining Manual, in preference to the publication the Mines Register, the respondent has published and circulated to subscribers and prospective subscribers of the publication known as the Mines Register, and to others located throughout the various States of the United States, many false and misleading statements with respect to the value, completeness, and thoroughness of said competitive publication, the Mines Register.

PAR. 5. Included in and embraced in said circular letters or other such written, printed, or typed matter so distributed by the respondent, as aforesaid, have been and are false, misleading, and derogatory statements as follows:

Should you, by chance, be contemplating paying \$25 for The Mines Register, which may possibly be published by the end of the year, we want to tell you that The Mining Manual will bring you all the information on the mining companies it will contain and in addition a more complete, up-to-date and later coverage of the mines in the United States. We urge you to save the \$15 difference.

NOTICE—To Subscribers to THE MINES REGISTER:

We understand you have subscribed for a copy of the above book expected to be published later this year.

We know from experience that it is impossible to publish up-to-date and complete information on the mines in a single volume. That more than 50% of the data is out-of-date by the time such a book is off the press. The present activity in the mining industry is too great to expect otherwise.

Why pay \$25 and wait for old, out-of-date information when you can obtain now the very latest data in The Mining Manual. And the Mining Manual keeps bringing you this late, authentic data throughout the year. It keeps you abreast of the developments in the only way possible, by publishing in sections.

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Furthermore it only costs you \$10, if you use the enclosed special order form at once.

Send your order today as this offer is limited.

As you know, books like *The Mines Register* are far too often consulted to find little or no information on the subject desired, in fact, inquiry privileges are necessary to give any service a practical and real business value.

PAR. 6. Through the use of the aforesaid false and misleading statements and representations above set out, and others similar thereto, the respondent has unfairly disparaged his competitor, the *Atlas Publishing Co., Inc.*, and its publication, the *Mines Register*. In truth and in fact, the aforesaid publication, the *Mines Register*, is an authentic, reliable, high-grade publication, containing informative and up-to-date information covered in a practical and thorough manner. The information with respect to mining companies and mining operations contained in said publication is not out of date or of no value.

PAR. 7. The aforesaid false representations and implications so made and used by the respondent in connection with the sale of his publication in said commerce have the tendency and capacity to, and do, mislead and deceive subscribers and prospective subscribers to the publication, the *Mines Register*, as well as others, into the false and erroneous beliefs that said representations and implications are true; that said publication, the *Mines Register*, is not an authentic, reliable and high-grade publication, containing informative and up-to-date matter, covered in a practical and thorough manner; that the information and material therein contained is out of date and that respondent's publication, the *Mining Manual*, is superior to the competitive publication, the *Mines Register*, in the respects herein alleged, and into the purchase of respondent's said publication in preference to and in lieu of the publication compiled, sold and distributed by its aforesaid competitor. As a result of the aforesaid mistaken and erroneous beliefs on the part of subscribers and prospective subscribers to the competitive publication, the *Mines Register*, and on the part of other members of the purchasing public, all induced as aforesaid, trade has been diverted unfairly to the respondent from such competitor. As a consequence thereof injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States.

PAR. 8. In the course and conduct of his business, and for the purpose of inducing the purchase of his publication, the *Mining Manual*, respondent made and caused to be made, by means of circular letters addressed to persons located in various States of the United States other than the State of California, representations and claims concern-

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ing the length of time he had been engaged in the business of publishing such books, the high public regard in which the Mining Manual was held in comparison with all other similar works, the scope of the information contained therein and the readiness of the book for delivery.

Among and typical of the said representations and claims so made are those contained in the first and the fourth from the last of the subparagraphs quoted in paragraph 5 hereof and the following:

Established 1925.

The standard reference work on mines and mining companies in the United States.

The Only Up-To-Date Information service on Mines Published.

* * * we are very anxious that you have a copy of this new large book * * *.

The said statements appear in connection with a depiction of a book of substantial bulk, upon whose cover appears "The Mining Manual."

PAR. 9. Through the use of the aforesaid statements, and others of similar import and meaning, respondent has represented, directly and by implication, that he has been engaged in publishing books of mining information since 1925; that the Mining Manual is generally recognized as a work of preeminent merit; that the said book contained all of the information with respect to mining companies contained in a similar book known as the Mines Register, and that the said Mining Manual was ready for immediate delivery to purchasers.

PAR. 10. The aforesaid claims and representations so made and disseminated by respondent are misleading and untrue. In truth and in fact, respondent has not been engaged in the business of publishing such books since 1925. The Mining Manual is not generally recognized as a work of preeminent merit in its field. The Mines Register contains information on mines and mining companies which is not included in the Mining Manual. The Mining Manual was not ready for immediate delivery to purchasers at the time when the statement last quoted in paragraph 8 hereof was disseminated as aforesaid.

PAR. 11. The use by respondent of the representations as set forth herein in connection with the offering for sale and sale of his publication, the Mining Manual, has had the tendency and capacity to mislead purchasers and prospective purchasers into the erroneous and mistaken belief that such claims and representations are true, and to induce them to purchase the said book on account thereof.

As a result thereof, trade has been unfairly diverted to respondent from respondent's competitors who do not resort to such false and deceptive representations. As a consequence thereof, injury has been done by respondent to competition in commerce between and among various States of the United States and in the District of Columbia.

PAR. 12. The above acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition 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 August 31, 1938, issued and subsequently served its complaint upon the respondent, Clarence B. Council, individually, and trading as Statistical Research Bureau, and Metals and Minerals Research Bureau, charging him with the use of unfair methods of competition in commerce in violation of the provisions of the said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of said complaint were introduced by R. J. Martin, John R. Philips, Jr., and D. T. Puckett, attorneys for the Commission, and in opposition to the allegations of the complaint by Harold E. Haven, attorney for the respondent, before trial 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.

Subsequent thereto, on motion of counsel for the Commission, the Federal Trade Commission, on December 14, A. D. 1940, entered its order amending the complaint filed herein and further ordering that evidence taken in support of, and in opposition to, the complaint be adopted as evidence in support of, and in opposition to, the complaint as amended; and on December 14, 1940, the Commission issued and subsequently served its amended complaint upon said respondent.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon said amended complaint, testimony and other evidence, report of the trial examiners upon the evidence, and brief in support of the complaint (no brief having been filed by the respondent or oral argument 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. Clarence B. Council, is an individual who, for some time prior to October 1, 1937, conducted a business under the trade name of "Statistical Research Bureau," at Room 523, 315 Montgomery Street, San Francisco, Calif. Subsequent to said date, said respondent conducted his said business under the trade name of "Metals and Minerals Research Bureau," at Room 300, Flatiron Building, 9 Sutter Street, San Francisco, Calif.

PAR. 2. For several years last past, respondent has been engaged in compiling and publishing, and in selling and distributing, a publication known as "The Mining Manual," in commerce among and between the various States of the United States. The purpose of said publication was to disseminate to subscribers thereto, certain mining information, and to acquaint them with information relative to the activities of mining companies. Respondent caused said publication, when sold, to be transported from his place of business in San Francisco, State of California, to purchasers thereof and subscribers thereto located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said publication in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, respondent has been in competition with other individuals and with firms and corporations likewise engaged in compiling and publishing, and in selling and distributing, publications of a similar nature and character, or designed and intended for similar usage, in commerce among and between the various States of the United States.

PAR. 4. Among the respondent's aforesaid competitors is the Atlas Publishing Company, Inc., a corporation having its principal place of business in the city of New York, State of New York. This concern compiles, publishes, sells, and distributes to purchasers and subscribers located throughout the various States of the United States and in the District of Columbia, a book or publication known as "The Mines Register." This publication is designed for the purpose of, and does, disseminate to subscribers thereto, intelligence and information with respect to mining, mining companies, and their activities in general.

PAR. 5. In the course and conduct of his business and for the purpose of inducing the purchase of his publication "The Mining Manual" in preference to the publication "The Mines Register," respondent has published and circulated to subscribers and prospective subscribers of

the publication known as "The Mines Register," and to others located throughout the various States of the United States, many false and misleading statements with respect to the value, completeness, and thoroughness of said competitive publication "The Mines Register" and the comparative merits of respondent's publication "The Mining Manual."

Among and typical of such representations are the following:

Should you, by chance, be contemplating paying \$25 for The Mines Register, which may possibly be published by the end of the year, we want to tell you that the Mining Manual will bring you all the information on the mining companies it will contain and in addition a more complete, up-to-date and later coverage of the mines in the United States. We urge you to save the \$15 difference.

NOTE.—To Subscribers to THE MINES REGISTER:

We understand you have subscribed for a copy of the above book expected to be published later this year.

We know from experience that it is impossible to publish up-to-date and complete information on the mines in a single volume. That more than 50% of the data is out-of-date by the time such a book is off the press. The present activity in the mining industry is too great to expect otherwise.

Why pay \$25 and wait for old, out-of-date information when you can obtain now the very latest data in The Mining Manual. And the Mining Manual keeps bringing you this late, authentic data throughout the year. It keeps you abreast of the developments in the only way possible, by publishing in sections.

As you know, books like The Mines Register are far too often consulted to find little or no information on the subject desired, in fact, inquiry privileges are necessary to give any service a practical and real business value.

PAR. 6. Through the use of the aforesaid false and misleading statements and representations, and others similar thereto, the respondent represented that his publication "The Mining Manual" is published periodically throughout the year, thereby giving complete and up-to-date information concerning various mining companies and their activities; that "The Mines Register," published by the Atlas Publishing Co., Inc., was not an authentic, reliable, high-grade publication containing information and up-to-date matter covered in a practical and thorough manner; that the information and material therein contained were out of date; and that "The Mining Manual" was superior to said competitive publication, "The Mines Register."

PAR. 7. In truth and in fact, respondent's publication "The Mining Manual" was not published periodically, and although such representations as to publication were made by the respondent in the early part of 1936, no issue was published during the year 1936, and it was not until February or March, 1937, that part 1, section 1, of said publication was issued and distributed. There were no further issues of said publication until November 1937, when respondent issued what was designated as part 1, section 2 of said publication. In 1938,

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part 1, section 3, was issued. The three sections described do not constitute the entire publication but only the first 200 pages of a perpetual manual which was never completed by the respondent. Consequently, said "The Mining Manual" did not furnish subscribers with complete or up-to-date information or furnish a service comparable to "The Mines Register." "The Mines Register" is a publication which is published from time to time, giving as complete information as is obtainable concerning various mining companies, organizations, equipment, etc., and is considered as being an authentic, reliable publication containing up-to-date matter. The use of the statements and representations made by the respondent with reference to "The Mines Register" constituted an unfair disparagement of his competitor the Atlas Publishing Co., Inc., and its publication "The Mines Register."

PAR. 8. In addition to the statements and representations hereinabove described, the respondent has made, and caused to be made, by means of circular letters addressed to persons located in various States of the United States, representations and claims concerning the length of time that he had been engaged in the business of publishing "The Mining Manual," the high public regard in which "The Mining Manual" is held in comparison to all other similar works, the scope of information contained therein, and the readiness of the book for delivery. Among and typical of the many representations and claims so made are the following:

Should you, by chance, be contemplating paying \$25 for The Mines Register, which may possibly be published by the end of the year, we want to tell you that The Mining Manual will bring you all the information on the mining companies it will contain and in addition a more complete, up-to-date and later coverage of the mines in the United States.

Established 1925.

A standard reference work on mines and mining companies in the United States.

The only up-to-date information service on mines published.

* * * We are very anxious that you have a copy of this new, large book. (The latter statement appears in connection with a depiction of a book of substantial bulk, upon the cover of which appears, "The Mining Manual.")

PAR. 9. Through the use of the aforesaid statements, and others of similar import and meaning, respondent has represented, directly and by implication, that he has been engaged in publishing books of mining information since 1925; that "The Mining Manual" is generally recognized as a work of preeminent merit and constitutes a standard reference work and is the only up-to-date information service on mines published; that the said book contains all information with respect to mining companies contained in the book known as

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"The Mines Register"; and that "The Mining Manual" was ready for immediate delivery to purchasers.

PAR. 10. The aforesaid claims and representations disseminated by respondent are misleading and untrue. In truth and in fact, respondent has not been engaged in the business of publishing such books since 1925, and "The Mining Manual" is not generally recognized as a work of preeminent merit in its field. It is not a standard reference work and is not the only up-to-date information service on mines published. "The Mines Register" contains information on mines and mining companies which is not included in "The Mining Manual." "The Mining Manual" was not ready for immediate delivery to purchasers; in fact, no part of said Manual was delivered until almost a year after such representation was made.

PAR. 11. The use by the respondent of the false and misleading statements and representations hereinabove set forth, including those with reference to "The Mines Register," its comparative value to "The Mining Manual," and the scope and value of "The Mining Manual," has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations and statements are true, that "The Mines Register" is not an authentic, reliable, and high-grade publication containing informative and up-to-date matter, and that "The Mining Manual" is a superior publication. As a result of such erroneous and mistaken belief, the purchasing public has been induced to purchase respondent's publication in preference to "The Mines Register" and other publications, thereby diverting trade unfairly to the respondent from his competitors who are engaged in 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 the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition 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 amended complaint of the Commission, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said amended complaint and in opposition thereto, report of the trial

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examiners upon the evidence, and brief filed in support of the amended complaint; 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 the respondent, Clarence B. Council, an individual, trading as Statistical Research Bureau, and as Metals and Minerals Research Bureau, or under any other trade name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of his publication known as "The Mining Manual," or any other similar publication known as "The Mining Manual," or any other similar publication, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Making, or causing to be made, in any form or manner, any false or disparaging statements with reference to the authenticity, reliability, or present value of the publication known as "The Mines Register," published by the Atlas Publishing Company, Inc., or any other competitive publication furnishing similar information or service.

2. Representing, directly or indirectly, that the information contained in respondent's publication "The Mining Manual" is more authentic or reliable, or has greater present value, than the publication "The Mines Register," or any other competitive publication furnishing similar information or service.

3. Representing, directly or indirectly, that respondent can furnish authentic, reliable, and up-to-date information through and by means of his publication "The Mining Manual," or any other similar publication, when the facilities for the issuance of such publication are not immediately available to the respondent.

4. Misrepresenting, in any manner, the nature, extent, or value of respondent's publication "The Mining Manual," or any other publication, or the length of time in which said respondent has been engaged in business.

5. Representing, directly or indirectly, that respondent's publication "The Mining Manual," or any similar publication, is a standard reference work on mines and mining companies in the United States, or that it supplies the only up-to-date information service on mines published.

It is further ordered, That the 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.

IN THE MATTER OF

MASTERKRAFT GUILD WEAVERS, INC., ASIA MOHI COMPANY, LTD., AND C. JAMES GARFALO, PRESIDENT OF MASTERKRAFT GUILD WEAVERS, INC. AND ASIA MOHI COMPANY, LTD.

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

Docket 4237. Complaint, Aug. 15, 1940—Decision, Feb. 24, 1942

Where one of two corporations, under common control by an individual who was president and principal stockholder of both, engaged in interstate sale and distribution of rugs in substantial competition with others, including many who do not misrepresent their products or business status, or furnish their dealer customers with means for deceiving the public—

- (a) Made use, in invoices, catalogues, and price lists addressed to dealers, and on labels attached to rugs, of words "Hong Kong" and "Canton" to designate certain rugs which closely resembled Chinese Orientals, and of words "Mahah," "Numda," "Kirma," "Orienta," and "Bagdad" to designate rugs which closely resembled Orientals;

Notwithstanding fact said rugs were not, as thus indicated, true Chinese Oriental or Oriental rugs made by hand in China or the Orient, of pleasing texture and beautiful design, with pile of wool or silk and wool, threads of which were individually knotted in a special manner; but, while so closely resembling such rugs as to be indistinguishable therefrom by a large portion of the purchasing public, were made on power looms in Italy or Belgium, of cotton;

With result that said various rugs were readily accepted as being Chinese Oriental, Oriental, and true Indian "Numdah" rugs, notwithstanding fact that, pursuant to the United States Customs laws, they also bore labels indicating country of origin, which, being wholly inconsistent with other labels showing aforesaid names, could not properly qualify latter; and

- (b) Represented and implied that certain of their rugs were reproductions and copies, except as to material, of true Oriental, Chinese Oriental and Indian Numdah rugs, through furnishing to dealers catalogues and price lists containing such statements (along with such words as "Suez," "Orienta," "Bagdad," "Canton," etc.) as "The all rayon Oriental reproduction," "Cotton Oriental reproduction," "Cotton Chinese reproduction," "High pile cotton Numdah reproductions," etc.; and that others were true Oriental Mahal and Kirman rugs in all but material, through such statements, in connection with such names as "Mahah" and "Kirma," as "Heavy cotton Oriental" and "High quality cotton Oriental;"

Notwithstanding fact said rugs, as hereinbefore indicated, merely simulated Oriental, Chinese Oriental, or Numdah rugs, and particularly as respects last two, did not have the structure or characteristics of the true Kirman and Mahal rugs, even though differences in material be disregarded;

- (c) Furnished to dealers purchasing their said cotton European rugs advertising copy which was intended to be, and was, inserted by them in news-