

Syllabus

IN THE MATTER OF

NATHANIEL FRIEDMAN, TRADING AS CONSUMER'S
RESEARCH SERVICE AND CONSUMER'S REPORT
SERVICE

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

Docket 4734. Complaint, Mar. 17, 1942—Decision, Nov. 17, 1942

Where an individual, engaged in compiling and publishing, and in interstate sale and distribution to automobile dealers and the public, of certain publications—

- (a) Made use of trade names "Consumer's Research Service" and "Consumer's Report Service" in conduct of his business and displayed the same in and on the publications in question; and made use of the names "Consumer's Research Reporter" and "Consumer's Automobile Reporter" to designate such publications in and on the publications themselves and in referring to them in circular letters addressed to automobile dealers;

Notwithstanding the fact he was at no time connected with "Consumers' Research, Inc.," well-known non-profit corporation of Washington, N. J., or its monthly "Consumers' Research Bulletin" which, well-known to a large portion of the purchasing public, is regarded as a source of accurate and unbiased expert opinion with respect to the commodities covered by it;

- (b) Represented that he was an automotive expert or engineer and qualified to render authoritative opinions on the merits of automobiles, and that he maintained a staff of experts or engineers, through references thereto in introductions to said publications, and through statements in aforesaid circular letters;

The facts being that he had no training or experience which would qualify him as such an expert or engineer or enable him to render authoritative opinions; and had no staff of, and did not consult with, persons who could qualify in such capacity, the garage mechanics of whom he made occasional inquiries with respect to the mechanical features or performance of various makes of automobiles being in no wise expert on the subject;

- (c) Represented that the information given in his publications was impartial and that it was based upon results obtained from nation-wide polls of automobile owners or users, through statements in said pamphlets and circular letters;

The facts being that purported information contained therein was not impartial in that publications in question were prepared with the view of portraying certain makes of automobiles in a more favorable light than others, apparently to serve as sales aids to dealers handling those cars, toward whom almost exclusively his sales efforts were directed; and he did not in any manner conduct polls among car owners or users; and

- (d) Represented that his publications were copyrighted and "Dedicated to the Service of the People" through statements to that effect in or on them;

The facts being the publications were not copyrighted, were compiled, published, and sold by him as a commercial enterprise and solely for profit, and were in no way "dedicated to the service of the public";

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With tendency and capacity of misleading and deceiving a substantial number of automobile dealers and members of the purchasing public with respect to said business and the publications in question, thereby causing said public's purchase of the publications because of such mistaken belief:

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

Before *Mr. James A. Purcell*, trial examiner.

Mr. Randolph W. Branch for the Commission.

Mr. Isaac S. Friedman, of Chicago, Ill., 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 Nathaniel Friedman, of Chicago, Ill., hereinafter referred to as respondent, has violated the provisions of 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, Nathaniel Friedman, is an individual, trading and doing business under the names of "Consumer's Research Service" and "Consumer's Report Service." His office and principal place of business has been located, since about July 1, 1940, at 4305 North Keeler Avenue, Chicago, Ill., and prior to that time was located at 223 West Jackson Boulevard, Chicago, Ill.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of compiling and publishing, and selling and distributing in commerce as herein set out, certain publications known as "Consumer's Research Reporter, 1940 Report on Automobile Values" and "Consumer's Automobile Reporter, 1941 Report on Automobile Values." Said publications purport to supply information with respect to the relative merits of various makes of automobiles. In the course and conduct of his business respondent has sold the two said publications to various automobile dealers and to members of the general public, and caused them, when sold, to be transported from his aforesaid places of business in the State of Illinois to purchasers thereof located in various other States of the United States, and in the District of Columbia. Respondent has maintained a course of trade in said publications in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 3. In respondent's said "1940 Report on Automobile Values" the following statements appear:

Published by
Consumer's Research Service

Dedicated to the Service of the Public
Consumer's Research

The Consumer's Research Service was organized to facilitate the distribution of knowledge regarding consumers' goods.

This service furnishes accurate, usable and authoritative information on the comparative values of competing products in their respective fields.

Observations, opinions and conclusions contained herein are based upon a three point survey of the field covered in each particular volume, i. e.

1. Actual mechanical specifications obtained from the manufacturer of the product.

2. Nation-wide vote on preference and popularity.

3. The Editor and Engineering staffs' own opinion based on No. 1 and No. 2 above.

It seems only natural that car buyers would have some clear idea as to the characteristics most desired.*

*Facts upon which this Brochure is based were obtained from a questionnaire answered by thousands of car owners.

We base our conclusion on two factors, namely:

1. That which the public likes and demands.

2. The observations of our staff of auto engineers.

Copyright, 1939

PAR. 4. In respondent's said "1941 Report on Automobile Values," the following statements appear:

Published by
Consumer's Report Service

Consumer's Automobile Reporter is published to facilitate the distribution of knowledge regarding this phase of consumers' goods.

The book furnishes accurate, usable, authoritative information on the comparative values of competing makes in their respective price fields.

Observations, opinions, and conclusions contained herein are based on a three point survey of the field covered in this volume, i. e.

1. Actual mechanical specifications obtained from the manufacturer.

2. Nation-wide vote on preference and popularity.

3. The Editor and Engineering staffs' own opinion based on No. 1 and No. 2 above.

It seems only natural that car buyers would have some clear ideas as to the characteristics most desired.*

*Facts upon which this Brochure is based were obtained from a questionnaire answered by thousands of car owners.

We base our conclusions on two factors, namely:

1. That which the public likes and demands.

2. The observations of our staff of auto engineers.

This is an impartial report.

Copyright, 1940

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PAR. 5. By reference to the opinion of "the Editor and Engineering staff" and "the observations of our staff of auto engineers" respondent has represented that he, being the editor of said publications, is so qualified by experience and education that his opinion is of value, that the publisher maintains a similarly qualified staff of engineers or automotive engineers, and that their valuable and authoritative opinions are reflected in the contents of said publications.

By the statement in the "1940 Report" that the publication is dedicated to the public respondent has represented that the information and conclusions contained therein are impartially given. Respondent has also represented himself as "Independent and Qualified" in such matters in circular letters sent to prospective purchasers of said publications.

PAR. 6. The aforesaid statements and representations are misleading and untrue. In truth and in fact the business of the respondent was not dedicated to the service of the public, nor were his publications issued to facilitate the distribution of knowledge regarding automobiles. The enterprise was created for his own individual profit, which was expected to accrue from the sale of the said publications. The information and opinions contained in said publications were not impartial, and were so set forth as to most favorably present "Plymouth," "De Soto," and "Chrysler" automobiles made by the Chrysler Corporation. Respondent at no time conducted any nationwide vote on public preference or popularity, or sent out any questionnaire to car owners. The respondent has no education or experience which qualifies him to express any opinion of value with respect to automobiles, and he at no time maintained any staff of engineers or research workers. The said publications were not covered by copyrights.

Respondent's publications were intended to be, and were, sold almost exclusively to agents and distributors of the various automobiles manufactured by the Chrysler Corporation as aids in selling said automobiles.

PAR. 7. For more than 7 years last past a nonprofit corporation, organized under the laws of the State of New Jersey, known as Consumers' Research, Inc., and having a principal place of business at Washington, N. J., has been engaged in the dissemination of information regarding the characteristics and merits of a large number of commodities, including automobiles, by means of a monthly publication known as "Consumers' Research Bulletin." This publication is distributed to members of the general public who subscribe therefor, and certain issues are available to nonsubscribers. This corporation, and its said publication, are well known to a large portion of the

purchasing public, by whom the said publication is regarded as a source of accurate and unbiased expert opinion with respect to the characteristics and merits of a large number of articles, including automobiles. Respondent is in no way connected with Consumers' Research, Inc., or its publication, "Consumers' Research Bulletin."

PAR. 8. The use by respondent of the statements and representations set forth in paragraphs 3 and 4 hereof, has had the tendency and capacity to confuse and mislead readers and prospective purchasers of the said publications into the erroneous and mistaken belief that such statements and representations are true and to induce the purchase of said publications on account thereof.

The use by respondent of the name "Consumer's Research Reporter" and "Consumer's Automobile Reporter" for his said publications and his use of the trade names "Consumer's Research Service" and "Consumer's Report Service," have had the tendency and capacity to confuse and mislead readers of said publications and prospective purchasers thereof into the erroneous and mistaken belief that said publications were in fact compiled and published by Consumers' Research, Inc., of Washington, N. J., and to induce the purchase of said publications on account thereof.

PAR. 9. The aforesaid acts and practices of respondent have the effect of placing in the hands of automobile dealers who purchase said publications for use in connection with the sale of their automobiles to the public, means and instrumentalities whereby they may, knowingly or otherwise, deceive the purchasing public in the particulars aforesaid.

PAR. 10. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public, and constitute 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 March 17, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Nathaniel Friedman, an individual, trading and doing business under the names Consumer's Research Service and Consumer's Report Service, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission and in opposition thereto by the attorney for the respondent, before a trial examiner of the

Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent 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. The respondent, Nathaniel Friedman, is an individual, who, during the period from July 1939, to February 1941, was engaged, under the trade names Consumer's Research Service and Consumer's Report Service, in compiling and publishing certain publications designated by him as "Consumer's Research Reporter" and "Consumer's Automobile Reporter," and in the sale and distribution of such publications to automobile dealers and the public. The publications purported to supply information with respect to the relative merits of various makes of automobiles. At one time respondent carried on his business operations from his residence, which was located at 4305 North Keeler Avenue, Chicago, Ill., but subsequently respondent had a mailing address at 223 West Jackson Boulevard, Chicago, Ill.

PAR. 2. In the course and conduct of his business respondent caused his publications, when sold, to be transported from his places of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. During the entire period of time mentioned above, respondent maintained a course of trade in his publications in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent's first publication, a pamphlet designated by him as "Consumer's Research Reporter" and which bore the further title of "1940 Report on Automobile Values," contained an introduction which read in part as follows:

The Consumer's Research Service was organized to facilitate the distribution of knowledge regarding Consumer's goods. This service furnishes accurate, usable, authoritative information on the comparative values of competing products in their respective fields. Observations, opinions, and conclu-

sions contained herein are based on a three point survey of the field covered in each particular volume, i. e.

1. Actual mechanical specifications obtained from the manufacturer of the product.

2. Nation wide vote on preference and popularity.

3. The Editor and Engineering staffs own opinion based on No. 1 and No. 2 above.

* * * * *

Now what features are these that stand out as valuable assets and as essential items to look for? We base our conclusion on two factors namely:

1. That which the public likes and demands.

2. The observations of our staff of auto engineers.

* * * * *

Facts upon which this Brochure is based were obtained from a questionnaire answered by thousands of car owners.

On the front cover of the pamphlet there also appeared the statement: "Dedicated to the Service of the Public," and on the inside page of the cover, the legend "Published by Consumer's Research Service, An Independent Organization * * * Copyright, 1939." The most significant part of the pamphlet was a chart or table setting forth some 21 points or features with respect to the construction of automobiles and purporting to give the rating of some eighteen automobiles of various makes, the rating of each make of car being determined by the number of the 21 listed features possessed by it.

The second and last of respondent's publications was issued about a year after the 1940 pamphlet, and was in substance the same as the first pamphlet except that it was for 1941 and was entitled "Consumer's Automobile Reporter" instead of "Consumer's Research Reporter." Also, the legend, "Dedicated to the Service of the Public" was omitted from the front cover.

In soliciting the sale of his 1941 pamphlets respondent addressed numerous circular letters to automobile dealers throughout the United States, which read in part as follows:

Please assume for the moment that you have at your beck and call a group of automotive specialists and engineers, who receive and analyze all the statistical figures covering the NEW 1941 car models.

In addition to this, also assume that they receive and study almost all the auto and engine figures and data that is available, against which they check their own independent conclusions and opinions, so as to produce a definite, IMPARTIAL opinion as to which car offers the best buy for the money.

Would you pay this group 2½ cents to talk to and convince one of your prospects that the car you are selling is not only the best buy in its field, but it has features and values that will compare it favorably with cars selling for almost twice the price?

To actually employ such a staff would entail great expense. However, through the Consumer's Report Service you can profit from the experience and knowledge of just such a group of automobile specialists, at a cost that is insignificant.

Findings

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Think what it would mean to have the Consumer's Automobile Reports at your command. They are convincing, logical, and full of true and accurate information, information that shoves aside sales resistance and results in more and still more car sales.

PAR. 4. Through the use of the statements and legends set forth above and others of a similar nature, respondent represented to automobile dealers and the public, directly or by implication, that he was an automotive expert and was qualified to render authoritative opinions on the merits of automobiles, and that he maintained in connection with his business a staff of experts or engineers who likewise were qualified to render such opinions; that respondent's publications were dedicated to the service of the public; that the purported information set forth in his publications was impartial; that such information was based in part upon results obtained from nation-wide polls of automobile owners; and that his publications were copyrighted.

PAR. 5. The Commission finds that there was no basis in fact for these representations. Respondent has had no training or experience which would qualify him as an automotive expert or engineer, or enable him to render authoritative opinions with respect to automobiles. No staff of experts or engineers was maintained by respondent, nor did he consult with persons who could qualify in that capacity. Inquiries were occasionally made by respondent of garage mechanics with respect to the mechanical features or the performance of various makes of automobiles, but such persons were in no wise experts on the subject. Respondent's publications were compiled, published, and sold by him as a commercial enterprise solely, for profit, and were in no way dedicated to the service of the public.

Nor was the purported information set forth in respondent's publications impartial, as it appears from the evidence that respondent prepared the publications with the view of portraying certain makes of automobiles in a more favorable light than other makes. Apparently it was respondent's purpose to prepare his pamphlets in such a manner that they would serve as sales aids to automobile dealers handling these particular makes of cars, and it was toward these dealers almost exclusively that respondent directed his efforts to sell his pamphlets. No questionnaires were sent by respondent to car owners, nor did respondent in any other manner conduct polls among owners or users of automobiles. Neither of respondent's publications was covered by copyright.

PAR. 6. The Commission further finds that the use by respondent of the trade names "Consumer's Research Service" and "Consumer's Report Service," and the use of the names "Consumer's Research Reporter" and "Consumer's Automobile Reporter" to designate and

describe his publications, was misleading to dealers and the purchasing public in that such names closely resemble the name of "Consumers' Research, Inc.," a nonprofit corporation organized under the laws of the State of N. J. and having its principal place of business in Washington, N. J. For a number of years this corporation has been engaged in the dissemination of information regarding the characteristics and merits of a large number of commodities, including automobiles, such information being disseminated by means of a monthly publication known as "Consumers' Research Bulletin." This publication is distributed to members of the general public who subscribe therefor, and certain issues are available to nonsubscribers as well. The corporation and its publication are well known to a large portion of the purchasing public, and the publication is regarded by the public as a source of accurate and unbiased expert opinion with respect to the characteristics and merits of the commodities covered by it. Respondent has not at any time been connected with Consumers' Research, Inc., or its publication.

PAR. 7. The use by respondent of the misleading and deceptive representations referred to herein, including the use of the aforesaid trade names and of the aforesaid titles for respondent's publications, had the tendency and capacity to mislead and deceive a substantial number of automobile dealers and members of the purchasing public with respect to the nature and identity of respondent's business, and with respect to the nature, origin, value, authenticity, and reliability of respondent's publications, and the tendency and capacity to cause such dealers and members of the public to purchase substantial quantities of respondent's publications as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice of the public, and constitute 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 in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been

requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Nathaniel Friedman, individually, and trading as Consumer's Research Service and as Consumer's Report Service, or trading under any other name, and his representatives, agents, and employees, 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 respondent's publications designated "Consumer's Research Reporter" and "Consumer's Automobile Reporter," or any other publication of substantially similar character, do forthwith cease and desist from:

1. Using the word "Consumer" or "Consumers" as a part of respondent's trade name or as a part of the name or title of respondent's publications, or otherwise representing, directly or by implication, that respondent has any connection with the corporation known as Consumers' Research, Inc., of Washington, N. J., or that respondent's publications are the publications of said corporation.

2. Representing, directly or by implication:

- (a) That respondent is an automotive expert or engineer, or that he is qualified to render authoritative opinions on the merits of automobiles.

- (b) That respondent maintains any staff of experts or engineers in connection with his business.

- (c) That the information given in respondent's publications is impartial.

- (d) That said information is based in whole or in part upon results obtained from polls of automobile owners or users.

- (e) That said publications are copyrighted.

- (f) That said publications are "dedicated to the service of the public," or that respondent's business is anything other than a commercial enterprise.

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.

Syllabus

IN THE MATTER OF
NEW YORK HANDKERCHIEF MANUFACTURING
COMPANY,

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

Docket 4727. Complaint, Mar. 11, 1942—Decision, Nov. 30, 1942

Where a corporation, engaged at its place of business in Chicago, Ill., in the manufacture and interstate sale and distribution of handkerchiefs to, principally, jobbers and retailers—

(a) Represented that certain of its said products were made in and imported from Ireland, or were made in the United States from materials imported from Ireland, through use of word "Erin" on paper wrappers enclosing the boxes in which it packed said brand in 5 dozen quantities, together with depictions of a harp and shamrocks superimposed upon a background of traditional Irish green with "Made in U. S. A." at the bottom of the wrapper and in much smaller type; and through use of similar legends and depictions upon a green paper band which usually enclosed each dozen or half-dozen handkerchiefs within the box; and, occasionally, through use of said brand name upon a green sticker with depiction of a harp attached to top handkerchief of a lot in lieu of a band; and

(b) Represented further that its said products were linen, through use on such wrappers, bands, and stickers of legend "Soft Linen Finish";

Notwithstanding the fact that the handkerchiefs thus branded were not made from linen of any kind, but were composed entirely of cotton; and were not imported from Ireland or made of materials imported from Ireland, long famous throughout the United States for its linen products, which are preferred by a substantial portion of the purchasing public to those produced elsewhere;

With tendency and capacity to mislead and deceive a substantial number of dealer and consumer purchasers, and thereby to cause them to purchase substantial quantities of said handkerchiefs; and with effect of placing in the hands of uninformed or unscrupulous dealers a means by which they might mislead and deceive the public:

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

As respects the alleged false representation by a handkerchief manufacturer that its products were made in Ireland or of material from Ireland through use of word "Erin" as brand name on labels and wrappers thereof, together with depiction of shamrocks: Use by said manufacturer of legend "Made in U. S. A." was not sufficient, as contended, to prevent deception of the public with respect to the origin of such handkerchiefs, entirely aside from the fact that such legend was branded in much smaller and less conspicuous type than the other words and would usually escape the attention of the purchaser.