

Syllabus

IN THE MATTER OF
NORTHWEST FILM AD SERVICE, INC., AND
FRANK D. ATKINS

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

Docket 4007. Complaint, Feb. 1, 1940—Decision, Feb. 20, 1943

Where a corporation and its president, engaged in the competitive interstate sale and distribution of an advertising film service which consisted of advertising films displaying such nationally advertised articles as automobiles, refrigerators, washing machines, and automobile tires, to which were attached advertising trailers with the name and address of the purchaser of the film service and such other information as purchaser might request; contracting with retailers to deliver films advertising the dealer's products to theaters named for a specified price, and dealer agreeing to purchase from them a moving picture trailer containing his name, address and other advertising material—

(a) Represented that corporation in question was the producer of said films and trailers, and that their business was nation-wide in scope, placing upon various orders and advertising material such notations as "General Offices 505 Guardian Bldg., Portland, Oregon" and "Offices in Portland, New Orleans, Chicago, Cleveland, Kansas City, New York, Dallas, Minneapolis";

When in fact they were not engaged in the production of any film, but solely in the distribution of films produced by a Kansas City concern, and they had no branch office or any place of business other than that in Portland, Oreg.;

(b) Represented that they had made arrangements with various automobile, refrigerator, washing-machine, and tire manufacturers or distributors to co-operate with purchasers of their advertising film service, and to pay a portion of the cost thereof;

The facts being no such agreement had been entered into and they were not authorized to make any such representations; and

(c) Falsely represented, in some cases, that they would not solicit or sell any competitive dealer, notwithstanding fact they did so, and supplied advertising films covering competitive products;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true and into purchase of said film service; whereby trade was diverted unfairly to them from 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 in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. B. G. Wilson* for the Commission.

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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 Northwest Film Ad Service, Inc., a corporation, and Frank D. Atkins, an individual, hereinafter referred to as respondents, have 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. The respondent, Northwest Film Ad Service, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oregon, with its office located at 2746 Northeast Twenty-fifth Avenue in the city of Portland, Oreg.

The respondent, Frank D. Atkins, an individual, is president of the aforesaid corporate respondent, and formulates, controls, and directs the policies of the corporate respondent. The respondents have acted in conjunction and cooperation with each other in carrying out the acts and practices hereinafter set forth.

PAR. 2. The respondents are now, and for some time last past have been, engaged in the sale and distribution of advertising films and moving picture trailers. They cause such films and trailers, when sold, to be transported from their aforesaid place of business in the State of Oregon to the purchasers thereof located in various other States of the United States, and in the District of Columbia. Respondents maintain, and at all times mentioned herein, have maintained, a course of trade in said films and trailers in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 3. The respondents are now, and during all the times mentioned herein have been, in substantial competition with other corporations, and with firms, partnerships, and individuals also engaged in the sale and distribution of advertising films and moving picture trailers in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their advertising films and trailers, the respondents have made, and are now making, false and misleading statements and representations concerning such films and trailers, as well as false and misleading statements and representations concerning similar products sold and distributed by their competitors.

Among and typical of such false and misleading statements and representations made by the respondents are the following:

1. That the respondents are producers of advertising films and trailers as well as distributors;

2. That the respondents' business is Nation-wide in its scope, and that respondents maintain offices in numerous cities throughout the United States;

3. That the respondents have contacted the manufacturers or distributors of various products sold by the prospective purchaser, and that such manufacturers or distributors have agreed to cooperate with such prospective purchaser in the film advertising of their respective products, and will pay a portion of the cost of such advertising; and that the prospective purchaser is being contacted by respondents at the instance of the manufacturer or distributor;

4. That the respondents have negotiated contracts with the local theaters to show their advertising films and trailers;

5. That the respondents are agents of certain of their competitors, and have been authorized to renew contracts existing between the prospective purchaser and such competitors;

6. That the advertising film supplied by the respondents will be of the kind and quality designated by the purchaser;

7. That if the prospective purchaser will purchase their advertising film respondents will not solicit the competitors of such purchaser;

8. That certain of respondents' competitors are out of business.

PAR. 5. The foregoing representations are false and misleading. In truth and in fact the respondents are not producers of films of any kind, but are distributors only. The respondents' business is not Nation-wide in scope, but is confined largely to the States of Oregon, Washington, and California. Respondents maintain no offices other than their office in the city of Portland, Oreg. Respondents do not contact the manufacturers or distributors of any products with respect to enlisting the cooperation of such manufacturers or distributors in such film advertising, or with respect to obtaining an agreement from such manufacturers or distributors to pay a portion of the cost of such advertising. The contacts made by respondents with prospective purchasers are not made at the instance of such manufacturers or distributors, but are made wholly upon the initiative of respondents, and without the knowledge of such manufacturers and distributors. In many instances the respondents do not negotiate contracts with local theaters for the showing of such films.

The respondents are not the agents of any of their competitors nor are the respondents authorized by such competitors to renew contracts existing between the prospective purchasers and such competitors. In

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many instances the film actually supplied the purchaser by the respondents is not of the kind and quality specified by the purchaser, but is of a different kind, and is usually of an inferior quality. The respondents do not confine their sales of films to one purchaser in a particular line of business, but proceed to solicit the purchase of such films from other persons and business concerns engaged in the same line of business as the original purchaser. In many instances the competitors represented by respondents as being out of business are not in fact out of business, but are conducting their respective businesses in regular course.

PAR. 6. The use by respondents of the aforesaid false and misleading statements and representations has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and into the purchase of a substantial quantity of respondents' advertising films and trailers. As a result, trade is diverted unfairly to respondents from their competitors, and thereby substantial injury has been done, and is being done, to competition in commerce among and between the several States of the United States, and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and of respondents' 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 1, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Northwest Film Ad Service, Inc., a corporation, and Frank D. Atkins, an individual, charging them 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, and in opposition to, the allegations of said complaint were introduced 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. Thereafter this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of Trial Examiner Lewis

C. Russell upon the evidence, and brief in support of the complaint (no brief having been filed by the respondents 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. Respondent, Northwest Film Ad Service, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oregon, with its principal office located at 505 Guardian Building in the city of Portland, Oreg. Respondent, Frank D. Atkins, is an individual, and president of the respondent, Northwest Film Ad Service, Inc., and formulates, controls, and directs the policy of said corporate respondent. The respondents have acted in conjunction and cooperation with each other in carrying out the acts and practices hereinafter described.

PAR. 2. The respondents are now, and for some time last past have been engaged in the sale and distribution of various advertising film services and moving picture trailers. The advertising film service sold by respondents consisted of advertising films usually displaying nationally advertised articles, such as automobiles, refrigerators, Bendix washing machines, and Goodyear tires. To these films were attached specially produced advertising trailers, with the name and address of the purchaser and such other advertising information as the purchaser might request. During the period from September 1937 to October 1938 the respondents were distributors of advertising films and moving-picture trailers produced by the United Film Ad Service, Inc., of Kansas City, Mo.

PAR. 3. In the course and conduct of their business, the respondents entered into contracts with retail dealers to deliver films advertising products sold by such dealers, to theaters named in such contracts, for a specified price usually payable in instalments, and, in addition, the retail dealer agreed to purchase from the respondents a moving-picture trailer containing the name, address, and other advertising material of such dealer. Respondents caused such moving-picture trailers, when sold, and such advertising films, when contracted for screening, to be transported to the dealer or the theater designated by him, located in various States of the United States other than the State of Oregon or other than the State in which such films and trailers were produced. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in

said films and trailers in commerce among and between the various States of the United States.

PAR. 4. Respondents are now, and during all the times mentioned herein have been, in substantial competition with other corporations and with firms, partnerships, and individuals also engaged in the sale and distribution of advertising film services and moving-picture trailers in commerce among and between the various States of the United States.

PAR. 5. In connection with the sale and distribution of said advertising films and moving-picture trailers, the respondents represented that the respondent, Northwest Film Ad Service, Inc., was the producer of said advertising films and trailers, as well as the distributor thereof, and that the respondents' business was Nation-wide in scope. In this connection the respondents placed upon various orders and advertising material the notations "General Offices, 505 Guardian Bldg., Portland, Oregon" and "Offices in Portland, New Orleans, Chicago, Cleveland, Kansas City, New York, Dallas, Minneapolis," by which means respondents represented that the respondent, Northwest Film Ad Service, Inc., was a corporation with its general offices located at Portland, Oreg., and with branch offices located in the various cities named. In fact, the respondents were not engaged in the production of any films but were engaged solely in the distribution of films produced by the United Film Ad Service, Inc., of Kansas City, Mo., and said respondents did not at any time have branch offices located in any of the cities named or any office or place of business other than that located in Portland, Oreg.

PAR. 6. For the purpose of inducing the purchase of the advertising film service and moving-picture trailers distributed by the respondents, the respondents represented that they had made arrangements with various automobile, refrigerator, washing-machine, and tire manufacturers or distributors to cooperate with purchasers of respondents' advertising film service and trailers advertising their respective products and to pay a portion of the cost of such advertising. In fact, no manufacturer or distributor had entered into any agreement with the respondents to participate in any advertising sold by the respondents to their respective dealers, and the respondents were not authorized to represent that any manufacturer or distributor would pay any portion of the dealer's cost of respondents' advertising film service or trailers.

PAR. 7. In some cases the respondents have induced the purchase of their advertising film service and moving picture trailers by falsely representing that they would not solicit or sell any competitive dealer,

when in fact the respondents did solicit and sell such competitive dealers and supply advertising films covering competitive products.

PAR. 8. The use by the respondents of the aforesaid false and misleading statements and representations has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and into the purchase of respondents' advertising film service and moving picture trailers. As a result, trade has been diverted unfairly to the respondents from their competitors who are likewise engaged in the sale and distribution of advertising film services and moving picture trailers in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice and injury of the public and of respondents' 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, answer of the respondents, testimony and other evidence in support of, and in opposition to, the allegations of the complaint taken before trial examiners of the Commission theretofore duly designated by it, report of Trial Examiner Lewis C. Russell upon the evidence, and brief filed by counsel for the Commission; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Northwest Film Ad Service, Inc., a corporation, and its officers, and Frank D. Atkins, an individual, and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of advertising film service or moving picture trailers in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the respondents are producers of advertising films and moving picture trailers or that the respondents have branch offices or places of business in any city or State where no such branch office or place of business is operated or maintained.

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2. Representing directly or by implication that any manufacturer, distributor, or other person will pay any portion of the cost of any advertising film service or moving picture trailer unless directly authorized by such manufacturer, distributor, or other person to make such representations.

3. Representing directly or by implication that respondents will not sell competitors of any purchaser of respondents' advertising film service or moving picture trailers unless respondents refrain from such sale.

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

Syllabus

IN THE MATTER OF

G. F. PERGANDE, DOING BUSINESS AS PERGANDE
INSTITUTE

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

Docket 4583. Complaint, Sept. 18, 1941—Decision, Feb. 20, 1943

Where an individual, engaged in sale and distribution of correspondence courses for civil service examinations for positions in the United States Government—

- (a) Represented, directly or by implication, through advertisements in the form of cards, circulars, and pamphlets, that during the period involved there were a large number of positions available at all times in various branches of the Government;

The facts being that, until the war emergency, the supply of eligible persons for Government employment and whose names appeared on the Civil Service registers greatly exceeded the number of positions open; and such statements (made by said individual) as "100,000 more jobs under Civil Service" were misleading, in that most of the positions were already filled and persons in question were placed under Civil Service through noncompetitive examination; and the "Executive order placing 45,000 exempt positions under Civil Service" did not open that number of positions to those seeking Government employment; and the statements "42,141 appointed in 1936," and "44,484 appointed in 1937" were similarly misleading, in that they did not, as implied, apply to positions listed by said individual, but covered all appointments during years involved;

- (b) Represented that examinations were being held frequently and that appointments for such positions were made within a short time after examinations were passed;

The facts being examinations were not held frequently, but, in case of numerous positions, at intervals of several years; for certain positions only those were eligible who lived within the district served by a particular post office, and, during the years involved, appointment to civil service positions could not ordinarily be expected within several months, and in many cases more than a year after applicant had passed examination;

- (c) Represented that eligibility to take an examination could be determined by applicant or said individual, and that a high rating in the examination assured an early appointment;

The facts being that eligibility could be determined only by the Civil Service Commission and, because of veterans' preference, apportionment of appointments and other reasons, a high rating did not assure early appointment; and

- (d) Misleadingly represented or implied, through use of word "Institute" in his trade name and advertising, that he conducted an institution of higher learning devoted to research or instruction in philosophy, arts, sciences, or other learned subjects, that his school had a staff of educators and the facilities and resources required to carry on such work; when in fact it possessed none of such qualifications;