

IN THE MATTER OF

AMERICAN INDUSTRIAL RUBBER COMPANY, DOING
BUSINESS AS NU-TRED TIRE AGENCY, CHAMPION
RUBBER COMPANY, L. & S. TIRE DISTRIBUTORS, AND
HARVESTER TIRE SALES: AND HAROLD TRILLING,
MANNY G. TENENBAUM, OLIN K. LEWIS, AND E. F.
SMITHCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4819. Complaint, Aug. 20, 1942—Decision, Mar. 2, 1943*

Where a corporation, two individuals who were its general manager and sales manager and directed and controlled its business practices, and its regional sales manager who had authority to conduct business under various trade names employed by it and, in addition to personally selling its products, procured subagents and other salesmen to sell them; engaged in the purchasing and recapping of old automobile tires and interstate sale and distribution of said recapped products—

- (a) Represented, directly and by implication, through statements in advertising circulars, price lists, order blanks, and other printed matter distributed to prospective salesmen, salesmen, and dealers, that their recapped tires were of unusually high quality and would render satisfactory service over extended periods of time; and
- (b) Represented, as aforesaid, that only those casings were used by them for recapping which were of high quality and free from serious defects, and that before any casings were so used, they were carefully examined, tested, and repaired;

The facts being their said products were decidedly inferior; casings used—usually obtained from peddlers and junk dealers—were, in many instances, wholly unfit for recapping, being old, badly worn, and weak, frequently with large cracks and other serious defects; no serious effort was made to inspect or test casings before purchase; and many were beyond repair; and

- (c) Represented, as aforesaid, that their tires were guaranteed to render satisfactory service for 6 months or some other designated period, and that only in exceptional instances would they fail to render such service;

The facts being they did not give satisfactory service; mileage obtained was often negligible, they lasting, in some cases, only a few weeks or days before blow-outs; and so-called guarantee—which was, in fact, an agreement to supply another tire at half-price if original did not render satisfactory service for designated period of time—was, under the circumstances, of little or no practical benefit to the purchaser; and

- (d) Supplied to their salesmen for display to prospective purchasers cross-sections of tires purporting to be samples of their said products, which were in fact not representative but far superior to the casings actually used by them;

Complaint

With tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public with respect to their said tires, thereby inducing purchase thereof; and with further tendency to mislead and deceive a substantial number of prospective salesmen, and to cause them to undertake sale of said tires in the mistaken belief that aforesaid representations were true:

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. Webster Ballinger*, trial examiner.

Mr. Wm. T. Chantland for the Commission.

La Rochelle, Brooks & Beardsley, of Chicago, Ill., for American Industrial Rubber Co., Harold Trilling, and Manny G. Tenenbaum:

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 American Industrial Rubber Co., a corporation, and Harold Trilling, Manny G. Tenenbaum, Olin K. Lewis, and E. F. Smith, individuals, hereinafter referred to as respondents, have 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, American Industrial Rubber Co., is a corporation organized and existing under the laws of the State of Illinois, having its office and principal place of business at 4405 South La Salle Street, Chicago, Ill., and trading and doing business under the names "Nu-Tred Tire Agency," "Champion Rubber Company," "L. & S. Tire Distributors," and "Harvester Tire Sales." Respondent, Harold Trilling, is the principal stockholder, a director, and general manager of the corporate respondent. Respondent, Manny G. Tenenbaum, is in the employ of the corporate respondent, is in charge of its purchases of old automobile tires for recapping, and its sales of "recapped" tires. Said individual respondents are in control of the management, policies, and operation of said corporation, particularly in respect to the acts, practices, and methods herein alleged.

Respondents, Olin K. Lewis and E. F. Smith, are "master salesmen" for the corporate respondent, and have acted individually and jointly with all of the other respondents in connection with the activities carried on under the names Nu-Tred Tire Agency, Champion Rubber Co., L. & S. Tire Distributors, and Harvester Tire Sales. Respondents, Olin K. Lewis and E. F. Smith, in their capacities as

Complaint

36 F. T. C.

"master salesmen" or regional sales managers, receive additional overriding commissions on sales made by other salesmen, and they have acted together as a team and individually in selling respondents' recapped tires and in procuring subagents and other salesmen to sell respondents' said tires. Respondents, Olin K. Lewis and E. F. Smith, have participated in all of the activities charged herein and cooperated with the other respondents in carrying out the practices alleged.

PAR. 2. Respondents are now, and have been for more than 3 years last past, engaged in the business of purchasing old automobile tires, placing a new outer wearing surface upon these by the process known as "recapping," and distributing and selling "recapped" tires.

PAR. 3. In the course and conduct of their business respondents have caused said recapped tires, when sold, to be transported from their aforesaid place 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. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in the said "recapped" tires in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of said recapped tires, respondents have engaged in the practice of describing and designating certain of their recapped truck tires by the names "Super-Service" and "Double-Duty," and certain of their recapped passenger car tires by the names "Custom-Built," "Super-cap," and "Champion."

Through the use of the aforesaid names and designations, respondents have represented, directly and by implication, that the said tires are capable of rendering, and will render, service beyond or better than that of, and are superior to, other recapped tires.

PAR. 5. In the course and conduct of their said business, and for the purpose of inducing the purchase of said recapped tires, respondents have made, and caused to be made, by means of price lists, order blanks, advertising circulars, and other printed matter distributed to their salesmen in various States of the United States and in the District of Columbia, and used by such salesmen in connection with the sale of said tires, representations and claims with respect to the character, utility, and merit of the said tires, and respondents' "guarantee" thereof.

Among and typical of said representations and claims so made, are the following:

You can pay more—You can't buy better tires.
Solid, carefully tested casings.

* * * manufactured by modern, improved methods * * * expert workmanship, high quality, carefully inspected and expertly repaired casings. A leader in the field of price and quality.

* * * heavy duty, high quality casings which have been carefully tested and expertly repaired * * * careful and cautious examinations of each casing insures trouble free service.

The tires listed in th's order blank are high quality re-caps * * * all tires have been carefully selected and expertly repaired by skilled workmen.

Six Month Guarantee. These Champion Standard Recapped Tires are unconditionally guaranteed for 6 months. Any tire failing to give satisfactory service within this time, regardless of cause, will be replaced at one half list price.

Guarantee. All Champion Custom Built Recap Tires carry a 9 month unconditional guarantee. Any tire failing to give satisfactory service regardless of cause, within this time will be replaced at one half the list price.

Guarantee. Super Service Recapped Truck Tires are guaranteed for 90 days of satisfactory service. Any tire failing to give satisfactory service regardless of cause within that time will be replaced at one half of the list price.

Guarantee. Double Duty Truck Tires are guaranteed for 6 months of satisfactory service. Any tire failing to give satisfactory service regardless of cause within this time will be replaced at one half of the list price.

The L. & S. Tire Distributors of Chicago, Illinois, hereby warrant to the above purchaser that the materials and labor incorporated into the tire listed above are of such quality that the tire may be expected to render service for a minimum period of nine (9) months from the date of purchase for passenger car service or six (6) months from the date of purchase for commercial car service, provided same is used under usual conditions in such respective service; and the L. & S. Tire Distributors warrant the tire to give the purchaser satisfactory service under usual conditions of wear and tear except as herein-after stated during such respective minimum periods of time.

If the tire fails to give the purchaser satisfactory service under any usual conditions of wear and tear, except as hereinafter stated, the L. & S. Tire Distributors agree under this warranty and adjustment to replace such tire for one half ($\frac{1}{2}$) the then prevailing list price.

This warranty and adjustment agreement does not cover punctures, tires ruined in running flat, tires injured or destroyed by fire, wreck or collision, tires cut by chains or by obstructions on vehicle, theft, tubes used in any form, or tires used on taxicab or on common carrier bus service.

PAR. 6. Through the use of the aforesaid statements and representations, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that their tires are equal in all respects to other recapped tires, including those sold at prices greater than those at which respondents' tires are offered; that recaps are applied by respondents only to casings which have been carefully examined, tested, and repaired, are of high quality, and are solid; that the recap is expertly applied; that the recapped tires themselves are of high quality, and that only in comparatively rare instances will the tires fail to give the periods of satisfactory service stated in the various "Guarantees."

Complaint

36 F. T. C.

PAR. 7. The aforesaid claims and representations so made and disseminated by respondents in the course of their aforesaid business are false and misleading. In truth and in fact respondents' recapped tires are not of high quality but of very poor quality. The recap is so inexpertly applied that, in many cases, it "peels off" in use. The old casings, to which the recap is applied, are so carelessly examined, tested, and repaired, if at all, that many of them are so weak, damaged, or old as to be unfit for use, or incapable of rendering any substantial amount of service, after recapping. They are greatly inferior in quality to many other recapped tires. They are so poor that in only comparatively rare cases do they give satisfactory service for the periods "guaranteed," and respondents' so-called "guarantee," in view of the character of its wares, is not a bona fide guarantee of quality or service, but a fictitious one. The recap adds little, if anything, to the strength or durability of the casing or "carcass" to which it is applied, and the utility and durability of a recapped tire depends substantially upon the carcass being strong and in good condition. The purchasers of tires are motivated by a desire to obtain those which will give satisfactory service for a period of time, and this desire is not fulfilled by the purchase of tires that do not give such service even though they may be replaced by others equally bad, at half price. Many of respondents' tires were, to all practical intents and purposes, worthless.

PAR. 8. In the course and conduct of their business, and for the purpose of inducing the purchase of their recapped tires, respondents have engaged in the practice of supplying to their salesmen sections of tires, which purport to be taken from casings recapped by respondents, for display by such salesmen to prospective purchasers as indicative of the quality of their recapped tires. Such sections showed a quality of original casing or carcass incomparably superior to the carcasses of the recapped tires actually sold and delivered.

PAR. 9. In the course and conduct of their business, and for the purpose of inducing the purchase of their recapped tires, respondents have engaged in the practice of making representations and claims to prospective commission salesmen of said tires, with respect to the quality thereof, the sources from which respondents obtained their casings for recapping, knowing and intending that such misrepresentations would be repeated, as in fact they were, by such salesmen in connection with the sale of said tires, and with respect to the possible earnings or profits of those selling said tires on commission. Such representations were made by means of letters sent by respondents, and by verbal statements of their "sales managers" to such salesmen.

Among and typical of said representations and claims so made in letters to prospective salesmen are the following:

* * * quality merchandise at prices that cannot be equalled elsewhere.

A recapped tire is manufactured with a used tire casing which has been worn smooth. This casing is carefully inspected and expertly repaired to insure satisfactory service. The tread * * * will give satisfactory service.

* * * a tire which * * * under average circumstances will give real satisfaction.

* * * as they are in need of quality products you really have something to offer these people.

* * * we give for example that your total sales for one week were \$450.00. This would give you commissions earned—a total of \$87.50 on \$450.00 business. We use these figures to illustrate the earning possibilities of our line as these figures have been the average sales for our representatives.

Representations made verbally to prospective salesmen by respondents' "sales managers" were to the effect that all respondents' tires were originally of the well known Goodyear, Goodrich, and Firestone manufacture; that the United States Army leased tires from these manufacturers, and used them for 90 days, and that these tires were those recapped and sold by respondents; that large taxicab companies did not use tires after the treads were slightly worn and that these slightly worn tires were those recapped and sold by respondents.

PAR. 10. Through the use of the aforesaid statements and representations made by means of letters to prospective salesmen, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that the said tires were of good quality and would give good and satisfactory service and satisfaction to users thereof, and that the average net earnings and profit consistently made by respondents' active, full-time salesmen in the ordinary course of business, under normal conditions and circumstances, was \$87.50 per week.

PAR. 11. The aforesaid claims and representations as set forth in paragraphs 9 and 10 hereof are false and misleading. In truth and in fact, respondents' tires are not of good quality but of most inferior quality. They do not give satisfactory service in use, and satisfied purchasers thereof are but few. The casings recapped by respondents included the original products of many manufacturers. The United States Army does not lease tires. Those recapped by respondents were not those which had been used only for 90 days by the United States Army, or by taxicab companies only until the treads were slightly worn. Respondents acquired the old casings principally from dealers in junk and old tires. The average net earnings and profits consistently made by respondents' active, full-

time salesmen in the ordinary course of business, under normal conditions and circumstances, was much less than \$87.50 per week.

PAR. 12. The use by respondents of the foregoing false and misleading designations, representations, and claims, with respect to said tires, has had, and now has, the capacity and tendency to, and does, mislead and deceive purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such claims, representations, and designations are true and to induce them to purchase said tires on account thereof. The use by respondents of the foregoing false and misleading designations, representations, and claims with respect to said tires and the average earnings of respondents' salesmen has had, and now has, the capacity and tendency to, and does, mislead and deceive prospective salesmen of said tires into the erroneous and mistaken belief that such claims, representations, and designations are true and to induce them to undertake the sale of said tires on account thereof. Respondents' said acts and practices have placed in the hands of salesmen, engaged in the sale of said tires to the purchasing public, means and instrumentalities for misleading and deceiving the public in the particulars aforesaid.

PAR. 13. The aforesaid acts and practices, 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 August 20, 1942, issued its complaint against the respondent, American Industrial Rubber Co., a corporation, trading as Nu-Tred Tire Agency, Champion Rubber Co., L. & S. Tire Distributors, and Harvester Tire Sales, and against the respondents, Harold Trilling, Manny G. Tenenbaum, Olin K. Lewis, and E. F. Smith, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. Service of the complaint was obtained upon all of the respondents, except respondent E. F. Smith. As used hereinafter, the term "respondents" therefore will not include E. F. Smith unless the contrary is indicated. After the filing by respondents, American Industrial Rubber Company, Harold Trilling, and Manny G. Tenenbaum, of an answer to the complaint, testimony and other evidence in support of the allegations of the complaint were introduced by the attorneys for the Commission, and in opposition thereto by the attorney for the respondents, 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 respondents 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, American Industrial Rubber Co., is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business located at 4405 South La Salle Street, Chicago, Ill. The corporation has at times traded and done business under various trade names in addition to its corporate name, including the names Nu-Tred Tire Agency, Champion Rubber Co., L. & S. Tire Distributors, and Harvest Tire Sales.

Respondent Harold Trilling is a stockholder and director of the respondent corporation and is also its general manager. Respondent Manny G. Tenenbaum is the sales manager of the respondent corporation. These two individuals formulate the policies and direct, control, and dominate the business practices of the corporate respondent. Respondent Olin K. Lewis acts in the capacity of regional sales manager for the corporation, being authorized to conduct business for the corporation under certain of the various trade names referred to above and having general supervision over sales made in his territory. Respondent Lewis, in addition to making sales personally of the products of the respondent corporation, procures subagents and other salesmen to sell such products and receives a commission upon all sales made by such subagents and other salesmen. All of the respondents have acted in concert and cooperation with one another in carrying on the acts and practices hereinafter described.

PAR. 2. The respondents are now, and for some 3 years last past have been, engaged in the business of purchasing old automobile tires, placing a new outer wearing surface upon such tires by the process known as "recapping," and then selling and distributing such "recapped" tires. In the course and conduct of their business respondents cause, and have caused, their recapped tires, when sold, to be transported from their place 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. Respondents maintain, and have

maintained, a course of trade in their recapped tires 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 their business and for the purpose of inducing the purchase of their recapped tires, the respondents have made numerous representations and claims with respect to the character, utility, and merit of their tires, and with respect to a purported guarantee of such tires, such representations and claims having been made by means of advertising circulars, price lists, order blanks, and other printed matter distributed to prospective salesmen, salesmen, and dealers, and which representations and claims were used by such salesmen and dealers in soliciting the sale of respondents' tires. Among and typical of such representations and claims are the following:

* * * You can pay more, but you cannot buy a better tire * * *
(Com. Ex. No. 1)

Solid, Carefully Tested Casings. (Com. Ex. No. 1)

* * * manufactured by modern, improved methods, * * * expert workmanship, high quality carefully inspected and expertly repaired casings. A leader in the field of price and quality. (Com. Ex. No. 1)

* * * heavy duty high quality casings which have been carefully tested and expertly repaired.

* * * careful and cautious examinations of each casing insures trouble free service. * * * (Com. Ex. No. 1)

The tires listed in this order blank are high quality recaps * * * All tires have been carefully selected and expertly repaired by skilled workmen. (Com. Ex. No. 7)

SIX MONTH GUARANTEE

These Champion Standard Recapped Tires are unconditionally guaranteed for 6 months. Any tire failing to give satisfactory service within this time, regardless of cause, will be replaced at one half of list price. (Com. Ex. No. 1)

GUARANTEE

All Champion Custom Built Passenger Car Recap Tires carry a 9 month unconditional guarantee. Any tire failing to give satisfactory service regardless of cause, within this time, will be replaced at one half the list price. (Com. Ex. No. 1)

GUARANTEE

Super Service Recapped Truck Tires are guaranteed for 90 days of satisfactory service. Any tire failing to give satisfactory service regardless of cause within this time, will be replaced at one half of the list price. (Com. Ex. No. 1)

GUARANTEE

Double Duty Truck Tires are guaranteed for 6 months of satisfactory service. Any tire failing to give satisfactory service regardless of cause within this time, will be replaced at one half of the list price. (Com. Ex. No. 1)

The L. & S. Tire Distributors, of Chicago, Illinois hereby warrant to the above purchaser that the materials and labor incorporated into the tire listed above are of such quality that the tire may be expected to render service for a minimum period of nine (9) months from the date of purchase for passenger car service, or six (6) months from the date of purchase for commercial car service, provided same is used under usual conditions, in such respective service; and the L. & S. Tire Distributors warrant the tire to give the purchaser satisfactory service under usual conditions of wear and tear except as hereinafter stated during such respective minimum periods of time.

If the tire fails to give the purchaser satisfactory service under any usual conditions of wear and tear except as hereinafter stated, the L. & S. Tire Distributors agree under this warranty and adjustment to replace such tire at one half ($\frac{1}{2}$) the then prevailing list price.

This warranty and adjustment agreement does not cover punctures, tires ruined in running flat, tires injured or destroyed by fire, wrecks, or collision, tires cut by chains or by obstructions on vehicle, theft, tubes used in any form, or tires used on taxi cab or on common carrier bus service. (Com. Ex. No. 2)

PAR. 4. Through the use of these statements and representations, and others of a similar nature, the respondents have represented, directly or by implication, that their recapped tires are of unusually high quality and will render satisfactory service over extended periods of time; that only those tire casings are used by respondents for recapping purposes which are of high quality and free from any serious defect; that before any casings are used by respondents for recapping they are carefully examined, tested, and repaired; that respondents' tires are guaranteed to render satisfactory service for 6 months or some other designated period of time; and that only in exceptional or rare instances will such tires fail to render satisfactory service during the period of time referred to in respondents' guarantee.

PAR. 5. The Commission finds from the evidence that these representations and claims are false, deceptive, and misleading. Respondents' recapped tires are not of high quality but, generally speaking, are of decidedly inferior quality. The tire casings or carcasses used by respondents for recapping purposes are usually obtained from peddlers and junk dealers, and in many instances are wholly unfit for recapping purposes, being old, badly worn, and weak, and frequently having large cracks therein, as well as other serious defects. It is apparent from the record that respondents make no serious effort to inspect or test casings for their recapping suitability before purchasing them and that many of the casings used are beyond repair. The uncontradicted expert testimony is that no satisfactory recapping job can be performed upon a casing which is not sound and free of all serious defects. Numerous instances are disclosed in which respondents' tires failed to give satisfactory service, in some cases the tires lasting only a few weeks or even only a few days before

blow-outs occurred. In many cases the mileage obtained from the tires was in fact negligible.

Not only were prospective dealers and members of the purchasing public deceived as a result of respondents' representations; the record is replete with evidence of instances in which prospective salesmen were deceived and were thereby led to undertake the sale of respondents' tires, only to discover later that the tires delivered in response to orders obtained by them were practically worthless.

The purported guarantee furnished by respondents with their tires was not in fact a guarantee, but was merely an agreement on the part of respondents to supply another tire at half price if the original tire did not render satisfactory service for the designated period of time. Inasmuch as practically all of respondents' tires appear to have been of very inferior quality, the supplying of a second tire was of little or no practical benefit to the purchaser, particularly in view of the fact that the purchaser was compelled to pay an additional sum of money in order to obtain the second tire.

PAR. 6. A further practice in which respondents engaged was that of supplying to their salesmen, for display to prospective purchasers, cross sections of tires purporting to be samples of respondents' products; that is, to be truly representative of the casings used by respondents for recapping purposes. Such cross sections were not in fact representative of the casings actually used by respondents but were far superior to such casings.

PAR. 7. The Commission finds further that the acts and practices of the respondents, as herein set forth, have the tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public with respect to the nature, quality, and durability of respondents' tires and the tendency and capacity to cause such dealers and members of the public to purchase substantial quantities of respondents' tires as a result of the erroneous and mistaken belief engendered by such acts and practices. Respondents' acts and practices also have the tendency and capacity to mislead and deceive a substantial number of prospective salesmen of automobile tires and to cause such persons to undertake the sale of respondents' tires in the mistaken belief that respondents' representations were true.

CONCLUSION

The acts and practices of the respondents 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 certain of the respondents, 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 respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that certain of the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, American Industrial Rubber Co., a corporation, trading as Nu-Tred Tire Agency, Champion Rubber Co., L. & S. Tire Distributors, and Harvester Tire Sales, or trading under any other name, its officers, and Harold Trilling, Manny G. Tenenbaum, and Olin K. Lewis, individually, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondents' recapped automobile tires in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to respondents' sales agents or representatives, for display to prospective purchasers, samples purporting to represent the tires sold by respondents, when such purported samples are not in fact truly representative of respondents' products.

2. Representing, directly or by implication, that only those tire casings are used by respondents for recapping purposes which are of high quality and free from serious defects.

3. Representing, directly or by implication, that tire casings used by respondents for recapping purposes are carefully examined, tested, or repaired, when such is not the fact.

4. Representing, directly or by implication, that respondents' tires are "guaranteed" for 6 months, or any other designated period of time, when the purported guarantee is in fact only an agreement by respondents to supply a second tire at half price should the original tire prove defective.

5. Representing, directly or by implication, that it is only in exceptional or rare instances that respondents' tires fail to render satisfactory service.

6. Representing, directly or by implication, that respondents' tires are of high quality, or that they will render satisfactory service,

Order

36 F. T. C.

when such tires are in fact of inferior quality and will not render such service.

It is further ordered, That said 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.

Service of the complaint not having been obtained upon the respondent, E. F. Smith,

It is further ordered, That this proceeding be closed as to the said E. F. Smith, without prejudice to the right of the Commission, should the facts so warrant, to reopen the case and resume trial thereof in accordance with its regular procedure.

Complaint

IN THE MATTER OF

ALFRED JOHNSON SMITH, PAUL SMITH, AND ARTHUR SMITH, DOING BUSINESS AS JOHNSON SMITH & COMPANY

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

Docket 4778. Complaint, June 29, 1942—Decision, Mar. 3, 1943

Where three individuals, engaged in interstate sale and distribution of various articles, including watches—

Represented certain watches in their catalogues as "Railroad Watches" and "Railroad Type Watches," with, in some cases, the outline of a locomotive stamped on the back of the watch;

Notwithstanding the fact that said articles were in no sense railroad watches, which—known and designated as such by watch makers and the public generally—possess certain distinctive features in design and workmanship and meet high standards and stringent tests as to accuracy and dependability; possessed none of such distinctive mechanical features, but were of inferior construction; and were not comparable with railroad watches as to accuracy and dependability;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character and quality of said watches, thereby causing its purchase thereof 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. John P. Bramhall*, trial examiner.

Mr. L. E. Creel, Jr., for the Commission.

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 Alfred Johnson Smith, Paul Smith and Arthur Smith, copartners, doing business as Johnson Smith & Co., hereinafter referred to as respondents, have 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. Respondents, Alfred Johnson Smith, Paul Smith and Arthur Smith, are copartners, doing business as Johnson Smith & Co., with their office and principal place of business located at 6615 East Jefferson Avenue, Detroit, Mich.