

Syllabus

IN THE MATTER OF

NEO GRAVURE PRINTING CO., INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 4781. Complaint, July 9, 1942—Decision, May 24, 1943

Where (1) a corporation which maintained a printing establishment equipped for rotogravure printing of magazine sections for periodicals and catalogs; (2) two other corporations which had long engaged as exporters and importers doing business with foreign buyers and sellers in foreign countries, one particularly in Central America and the West Indies; and (3) an individual associated with them in the interstate sale of "Manufacturers' Displays" for "Export Catalogs" to manufacturers of numerous types of merchandise; engaged in the interstate sale to such manufacturers of such "Displays" and in maintaining a course of interstate and foreign trade therein and in the "Export Catalogs" which they compiled therefrom, some of which bore the name of one or the other of said export concerns;

By means of letters and the solicitation of said individual in cooperation with the others, and through salesmen working under his direction and by other means—

- (a) Represented and implied to American manufacturers that a definite demand existed from foreign customers of said export concerns for the merchandise made by the manufacturers whose "Displays" were accepted for insertion in their "Export Catalogs," and that such manufacturers would have good reason to expect that said concerns would each purchase from them for their foreign customers a considerable quantity of merchandise;
- (b) Represented that said export concerns' "Export Catalogs" were permanent catalogs, constituted a valuable sales help to their representatives in the more important foreign-trade centers and an important feature in their established and usual methods of securing business, and that use thereof had resulted in an important part of their foreign sales of American merchandise;
- (c) Represented that the business operations of said export concerns were dependent upon foreign business received by them through the use of their "Export Catalogs" containing "Displays" of American merchandise and that the insertion by manufacturers of their displays in said catalogs, and their furnishing of price lists and descriptive material ordinarily used in the sale thereof, would enable said concerns to sell such merchandise to their foreign customers, and that such an arrangement would act as an economical means to said manufacturers of securing profitable foreign business;

The facts being that no foreign market or demand existed or was likely to exist for any of the merchandise concerned; and such "Export Catalogs" were in no sense permanent, were not a feature in their established and usual method of procuring business, and played no essential part in their foreign sales of American merchandise, but the cooperative arrangement in question was entered into solely to make a profit from the sale of the printed advertising matter concerned;

- (d) Represented that the money required to be paid by the manufacturers pursuant to agreements covering the insertion of their "Displays" in said "Ex-

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port Catalogs" was to pay for the work performed by said printing establishment in the printing of 25,000 copies of the displays for binding in the export catalogs of said export concerns, and that latter would pay the cost of lay-out, translations, copy, binding, covers, addressing, and postage incident to the compilation, publication, delivery, and distribution abroad of said number of copies of an "Export Catalog" containing the displays, with part of the number to be bound as the "Export Catalog" of one of said export concerns and the balance as that of the other, and, after the withdrawal of one, with the entire 25,000 to be issued as the "Catalog" of the remaining concern;

The facts being that said printing concern required only a part of the money paid by the American manufacturers to cover its printing charges, said export concerns retained a considerable part thereof to pay the cost of lay-outs, translations, copy, binding, covers, addressing, and postage incident to publication, compilation, delivery, and distribution of said catalogs—the export concerns bearing none of said costs, as claimed—part was given to said individual as a commission for obtaining said agreements; and a considerable portion was also paid to one of said export corporations for permitting publication of said "Export Catalog" under its name; and

- (e) Falsely represented that said individual, and "M. A. Crews Co.," and "Pioneer Exporters"—trade names used by him—were connected with a department of such export concerns, and that such department constituted a useful and practical facility in the making of sales abroad of American merchandise through their respective foreign sales organizations;

When in fact his only connection with either concern or any department thereof was in the sale of said "Manufacturers' Displays" and in the issuance of said "Export Catalogs";

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that aforesaid representations and implications were true, and of causing them, as a result, to purchase aforesaid displays:

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

Mr. S. F. Rose for the Commission.

Burns, Currie & Walker, of New York City, for Neo Gravure Printing Co., Inc., Cuneo Press, Inc., Eggers & Heinlein, Inc., and Middleton & Co., Ltd.

COMPLAINT¹

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 Neo Gravure Printing Co., Inc., a corporation; Cuneo Press, Inc., a corporation; Eggers & Hein-

¹ The Commission dismissed the complaint as to Cuneo Press, Inc., by an order dated September 11, 1942, as follows:

This matter coming on to be heard by the Commission upon the record herein, and the Commission having duly considered the matter;

It is ordered, That the complaint herein be, and the same hereby is, dismissed as to Cuneo Press, Inc., without prejudice.

lein, Inc., a corporation; Middleton & Co., Ltd., a corporation; Marcus A. Crews, an individual, trading as M. A. Crews Co., and as Pioneer Exporters, 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Neo Gravure Printing Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business at 601 West Twenty-sixth Street, New York, N. Y.

Respondent, Cuneo Press, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business on West Cermak Road at South Canal Street, Chicago, Ill.

Respondent, Eggers & Heinlein, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business at 44 Whitehall Street, New York, N. Y.

Respondent, Middleton & Co., Ltd., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business at 80 Broad Street, New York, N. Y.

Respondent, Marcus A. Crews, is an individual, trading as M. A. Crews Co., and as Pioneer Exporters, with his principal office and place of business at Lawrenceburg, Tenn.

PAR. 2. Respondent, Neo Gravure Printing Co., Inc., now maintains, and for several years last past has maintained, a printing establishment in the State of New York, equipped for the printing of magazines and catalogs. Said respondent is a subsidiary and under the control of the respondent, Cuneo Press, Inc.

Respondent, Cuneo Press, Inc., is now engaged, and for several years last past has been engaged, in the printing business.

Respondent, Eggers & Heinlein, Inc., is now engaged, and for many years last past has been engaged in business, as an exporter and importer, and now acts, and for many years last past has acted, as an export and import commission merchant doing business with foreign buyers and sellers located in foreign countries and particularly in Central America and the West Indies.

Respondent, Middleton & Co., Ltd., is now engaged, and for many years has been engaged, in business, as an exporter, and now acts, and for many years has acted, as an export commission merchant doing business with foreign buyers located in various foreign countries.

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Respondent, Marcus A. Crews, is now engaged, and for several years last past has been engaged, in association with printers and exporters, in the sale of printed advertising matter, sometimes called "Manufacturers' Displays," suitable for insertion in catalogs, sometimes called "Export Catalogs," to manufacturers of numerous types of merchandise located in various States of the United States and in the District of Columbia.

Respondents are now engaged, and for more than 2 years last past have been engaged, in the sale of printed advertising matter, sometimes called "Manufacturers' Displays," suitable for insertion in catalogs, sometimes called "Export Catalogs," to manufacturers of numerous types of merchandise located in various States of the United States and in the District of Columbia.

A "Manufacturers' Display," as thus referred to, consists of printed advertising matter, describing and illustrating merchandise manufactured by an American manufacturer, printed on a sheet of paper suitable for insertion in, and as a part of, or section of, an "Export Catalog." An "Export Catalog," as thus referred to, consists of the "Displays" of a number of different American manufacturers, printed as aforesaid, which have been bound together in the form of a booklet with a cover bearing the name of an exporter and other material showing such booklet to be the catalog of such exporter.

Said various pieces of printed advertising matter, sometimes called "Manufacturers' Displays," upon being printed and sold by respondents, have been transported by respondents from the place in which they are printed in the State of New York to other places outside of the State of New York, located in various States of the United States, in the District of Columbia, and in foreign countries. "Export Catalogs," compiled as aforesaid, some bearing the name of the respondent, Eggers & Heinlein, Inc., and some bearing the name of the respondent, Middleton & Co., Ltd., have been transported by respondents from the place in which they have been compiled in the State of New York to other places outside the State of New York, located in various States of the United States, in the District of Columbia, and in foreign countries. Respondents now maintain, and at all times mentioned herein have maintained, a course of trade in said "Manufacturers' Displays" and in said "Export Catalogs" in commerce among and between the various States of the United States, in the District of Columbia, and between the State of New York and various foreign countries.

PAR. 3. In the course of the sale, offering for sale and distribution by the respondents, Neo Gravure Printing Co., Inc., Cuneo Press, Inc., Eggers & Heinlein, Inc., Middleton & Co., Ltd., and Marcus A. Crews,

of printed advertising matter, referred to by them as "Manufacturers' Displays" and as "Displays," as printed on various sheets of paper, and as compiled in catalogs, sometimes referred to by them as "Export Catalogs," as hereinbefore mentioned, said five respondents, by means of letters transmitted by United States mails, by and through the solicitation of the respondent, Marcus A. Crews, in cooperation with said other four respondents, and by and through salesmen working under his direction, and by various other means, have, directly and indirectly, made to American manufacturers, in order to induce them to purchase said printed advertising matter, representations and implications, typical of which are the following:

1. That a definite demand existed from the foreign customers of each of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., for the merchandise made by the American manufacturers whose "Displays" were accepted for insertion in the "Export Catalogs" of said respondents.

2. That the American manufacturers whose "Displays" were inserted in the respective "Export Catalogs" of respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., would have good reason to expect that said respondents would each purchase for their foreign customers a considerable quantity of the merchandise of said manufacturers.

3. That the "Export Catalogs" of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., containing "Displays" of American manufacturers, were each permanent catalogs; that each constituted and would be a valuable sales help to their foreign representatives living in the more important trade centers abroad; that each of such catalogs, as used by said respondents and their foreign representatives, was an important feature in their established and usual method of securing foreign business; and that the use of such catalog had resulted in the consummation of an important part of the sales of each of said respondents of American merchandise to their foreign customers.

4. That the operation of the business of each of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., had been, and was, dependent upon foreign business received by them through the use of their "Export Catalogs" containing "Displays" of merchandise made by American manufacturers.

5. That the insertion by American manufacturers of their "Displays" in the respective "Export Catalogs" of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., and the furnishing by them to said respondents of their price lists and the descriptive material ordinarily used by them in the sale of their merchandise, would enable said respondents to sell the merchandise of said manufacturers directly abroad to the respective foreign customers of said respondents; that such arrangement would act as an economical means to said manufacturers of securing foreign business and result in profit to them.

6. That the money required to be paid by the manufacturers pursuant to agreements entered into by them covering the insertion of their "Displays" in the "Export Catalog" of the respondent, Eggers & Heinlein, Inc., and in the "Export Catalog" of the respondent, Middleton & Co., Ltd., was for the purpose of paying to the respondent, Neo Gravure Printing Co., Inc., its ordinary and reasonable charges for the work performed by said last named respondent in the printing of 25,000 copies of the "Displays" of such manufacturers suitable for binding in the "Export Catalog" of the respondent, Eggers & Heinlein, Inc., and in the "Export Catalog" of the respondent, Middleton & Co., Ltd.

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7. That the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., would pay the cost of lay-outs, translations, copy, binding, covers, addressing, and postage incident to the publication, compilation, delivery, and distribution abroad, of 25,000 copies of an "Export Catalog" containing the "Displays" of the manufacturers entering into agreements for the insertion of their "Displays" in said catalog, a part of said number of copies to be bound as the "Export Catalog" of the respondent, Eggers & Heinlein, Inc., and the balance of said copies to be bound as the "Export Catalog" of the respondent, Middleton & Co., Ltd.

8. That Marcus A. Crews, and M. A. Crews Co., and Pioneer Exporters, trade names used by the respondent, Marcus A. Crews, were connected with a department of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., and that such department constituted a useful and practical facility in the making of sales abroad of American merchandise through the respective foreign sales organizations of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd.

PAR. 4. The representations and implications contained in paragraph 3 aforesaid were made, as aforesaid, by all of the respondents for a period of time, and from time to time, prior to the early part of 1940. Early in 1940 the respondent, Middleton & Co., Ltd., withdrew from the cooperative arrangement which the respondents had, as aforesaid, for the selling of printed advertising matter, hereinbefore called "Manufacturers' Displays," and for the issuance, as aforesaid, of "Export Catalogs." Thereafter, the remaining respondents continued said arrangement, and thereafter continued to make the representations and implications contained in paragraph 3, except that thereafter no mention was made by said remaining respondents of Middleton & Co., Ltd., its name, or its "Export Catalogs." Thereafter, it was represented that there would be issued 25,000 copies of the "Export Catalog" of the respondent, Eggers & Heinlein, Inc., containing the "Displays" of the American manufacturers entering into agreements for the insertion of their displays in said catalog.

PAR. 5. There is no basis in fact for any of the representations set out and referred to in paragraphs 3 and 4 above. Said representations and implications and others of similar import and meaning were used by respondents to induce, and did induce, a large number of American manufacturers, to believe that the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., would be able to sell, and would sell, to their foreign customers, large quantities of the merchandise made by each of the manufacturers whose "Displays" were inserted in the "Export Catalogs" of said last-named respondents. As a result of the belief thus engendered, a large number of American manufacturers were induced to pay, and did pay, to the respondent, Neo Gravure Printing Co., Inc., large sums of money, and to expend, and did expend, additional large sums of money, in connection with agreements entered into by them covering the printing of their "Dis-

plays" for insertion in said "Export Catalogs." They were also thus induced to commission, and did commission, said respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., to sell their merchandise abroad. All of said representations and implications were, and are, grossly exaggerated, deceptive, false, and misleading.

The truth is that, at the times that such representations and implications were made as aforesaid, no foreign market or demand existed, or was then likely to exist, for any of the merchandise made by many of the American manufacturers whose "Displays" were accepted for insertion in the "Export Catalogs" of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd. Much of the merchandise described in the "Displays" inserted in said catalogs has not, at any time heretofore mentioned, been salable abroad, as no foreign market or demand has existed for said merchandise. Neither of said last-named respondents has had any foreign customers to whom any amount of the merchandise of said American manufacturers could be sold.

The business of each of said last-named respondents was, at all times heretofore, so organized and operated that any and all of the representations and implications, made as aforesaid, which were likely to lead the American manufacturers whose "Displays" were accepted for insertion in said "Export Catalogs" to expect that said respondents, or either of them, would purchase for their foreign customers any appreciable amount of the merchandise of any of said manufacturers, were grossly deceptive. Said "Export Catalogs" were in no sense permanent catalogs which could be used permanently by said last-named respondents and were not susceptible of being used as an effective sales help by their foreign representatives or as a workable feature in the established and usual method of securing foreign business followed by said last-named respondents. The use of such a catalog by said last-named respondents was not likely to result and has not resulted, in the consummation of any material part of the sales abroad of American merchandise by either of said last-named respondents.

The fact is that "Export Catalogs" containing "Manufacturers' Displays" do not play, and have never played, an essential part in the making of sales abroad of American merchandise by either of said last-named respondents or by their respective foreign representatives. Such catalogs have been of no practical value as sales aids to the foreign representatives of said respondents. The business of neither of said respondents has ever been dependent upon the use of such a catalog.

The truth is that the money which the American manufacturers paid to the respondent, Neo Gravure Printing Co., Inc., pursuant to agreements entered into by them covering the insertion of their "Displays"

in said "Export Catalogs" of the respondents, Eggers & Heinlein, Inc. and Middleton & Co., Ltd., was not used solely for the purpose of paying to the respondent, Neo Gravure Printing Co., Inc., its ordinary and reasonable charges for the work performed by it in the printing of said "Displays." Only a part of such money was required by said respondent to cover its charges for such printing. Said respondent retained a considerable part of said money to pay the cost of lay-outs, translations, copy, binding, covers, addressing, and postage incident to the publication, compilation, delivery, and distribution abroad of the "Export Catalogs" containing said "Displays." A part of said money was given to the respondent, Marcus A. Crews, as a reward or commission for the obtaining by him and by the salesmen working under his direction of said agreements of said American manufacturers. A considerable portion of said money was also paid to the respondent, Eggers & Heinlein, Inc., as a reward or commission for permitting the publication of said "Export Catalog" under its name. Likewise, in cases where said "Export Catalog" was issued as aforesaid under the name of the respondent, Middleton & Co., Ltd., said respondent received a considerable portion of said money for permitting said catalog to be published under its name. Neither the respondent, Eggers & Heinlein, Inc., nor the respondent, Middleton & Co., Ltd., paid any of the costs incident to the publication, compilation, delivery, and distribution abroad of any of said "Export Catalogs" or the costs of any layouts, translations, copy, binding, covers, addressing, or postage incident thereto.

In truth and in fact the cooperative arrangement entered into by the respondents aforesaid under which sales were made of said printed advertising matter, hereinbefore called "Manufacturers' Displays," was entered into and carried out by said respondents, for the purpose of making a profit from the sale of such "Displays" and not for the purpose of making it possible, through the use of "Export Catalogs" containing such "Displays," or otherwise, to sell abroad the merchandise manufactured by the American manufacturers to whom said printed advertising matter was sold. Each representation, made as aforesaid, which indicated that the latter purpose was the purpose of such arrangement was nothing but a pretext and a false pretense to induce the purchase of said "Displays." The fact is that the only connection which the respondent, Marcus A. Crews, has ever had with either of the respondents, Eggers & Heinlein, Inc., or Middleton & Co., Ltd., or any department of said respondents, has been in the sale of said "Manufacturers' Displays" and in the issuance of said "Export Catalogs."

PAR. 6. The use by the respondents of the acts and practices hereinabove mentioned in connection with the sale, offering for sale and distribution of "Manufacturers' Displays" and "Export Catalogs" in commerce, as hereinbefore set out, has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations and implications aforesaid are true, when, in fact, they are not true, and cause many members of the purchasing public, because of said mistaken and erroneous belief, to purchase said "Manufacturers' Displays."

PAR. 7. The aforesaid acts and practices of respondents 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 the 9th day of July, A. D. 1942, issued and thereafter served its complaint in this proceeding upon the respondents, Neo Gravure Printing Co., Inc., a corporation; Cuneo Press, Inc., a corporation; Eggers & Heinlein, Inc., a corporation; Middleton & Co., Ltd., a corporation; and Marcus A. Crews, an individual, trading as M. A. Crews Co. and as Pioneer Exporters, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter, the respondents, Eggers & Heinlein, Inc., Middleton & Co., Ltd., and Marcus A. Crews, filed answers in this proceeding. On September 11, 1942, the Commission entered its order dismissing, without prejudice, the complaint against the respondent, Cuneo Press, Inc. Thereafter stipulations were entered into with the remaining respondents whereby it was stipulated and agreed that statements of facts signed and executed by Burns, Currie & Walker, counsel for the respondent, Neo Gravure Printing Co., Inc. and by the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., through their respective presidents, and by the individual respondent, Marcus A. Crews, and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statements of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without

the presentation of argument or the filing of briefs, said respondents expressly waiving the filing of report upon the evidence of the trial examiner.

Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and stipulations, said stipulations having been approved and accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Neo Gravure Printing Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 601 West Twenty-sixth Street, New York, N. Y.

The respondent, Eggers & Heinlein, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 44 Whitehall Street, New York, N. Y.

The respondent, Middleton & Co., Ltd., is a corporation, organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business located at 80 Broad Street, New York, N. Y.

The respondent, Marcus A. Crews, is an individual, trading as M. A. Crews Co. and as Pioneer Exporters, with his office and principal place of business at the present time located at Lawrenceburg, Tenn.

PAR. 2. Respondent, Neo Gravure Printing Co., Inc., now maintains, and for several years last past has maintained, a printing establishment in the State of New York, equipped for rotogravure printing of magazine sections for newspapers, magazines, and catalogs.

Respondent, Eggers & Heinlein, Inc., is now engaged, and for many years last past has been engaged, as an exporter and importer, and now acts, and for many years last past has acted, as an export and import commission merchant, doing business with foreign buyers and sellers located in foreign countries, particularly in Central America and the West Indies.

Respondent, Middleton & Co., Ltd., is now engaged, and for many years has been engaged, in business, as an exporter, and now acts, and for many years has acted, as an export commission merchant doing business with foreign buyers in various foreign countries.

Respondent, Marcus A. Crews, was at the time of the issuance of the complaint herein, and for several years prior thereto, engaged in asso-

ciation with printers and exporters in the sale of printed advertising matter, sometimes called "Manufacturers' Displays," suitable for insertion in catalogs, sometimes called "Export Catalogs," to manufacturers of numerous types of merchandise located in various States of the United States and in the District of Columbia.

For more than 2 years last past, except as found in paragraph 4 hereof, each of said respondents has been engaged in the sale of printed advertising matter, sometimes called "Manufacturers' Displays," suitable for insertion in catalogs, sometimes called "Export Catalogs," to manufacturers of numerous types of merchandise located in various States of the United States and in the District of Columbia.

A "Manufacturers' Display," as thus referred to, consists of printed advertising matter, describing and illustrating merchandise manufactured by an American manufacturer, printed on a sheet of paper suitable for insertion in, and as a part of, or section of, an "Export Catalog." An "Export Catalog," as thus referred to, consists of the "Displays" of a number of different American manufacturers, printed as aforesaid, which have been bound together in the form of a booklet with a cover bearing the name of an exporter and other material showing such booklet to be the catalog of such exporter.

Said various pieces of printed advertising matter, sometimes called "Manufacturers' Displays," upon being printed and sold by respondents, have been transported by respondents from the place in which they are printed in the State of New York to other places outside of the State of New York, located in various States of the United States, in the District of Columbia, and in foreign countries. "Export Catalogs," compiled as aforesaid, some bearing the name of the respondent, Eggers & Heinlein, Inc., and some bearing the name of the respondent, Middleton & Co., Ltd., have been transported by respondents from the place in which they have been compiled in the State of New York to other places outside the State of New York, located in various States of the United States, in the District of Columbia, and in foreign countries. Respondents have maintained a course of trade in said "Manufacturers' Displays" and in said "Export Catalogs" in commerce among and between the various States of the United States, in the District of Columbia, and between the State of New York and various foreign countries.

PAR. 3. In the course of the sale, offering for sale, and distribution by the respondents, Neo Gravure Printing Co., Inc., Eggers & Heinlein, Inc., Middleton & Co., Ltd., and Marcus A. Crews of printed advertising matter, referred to by them as "Manufacturers' Displays" and as "Displays," as printed on various sheets of paper, and as compiled in catalogs, sometimes referred to by them as "Export Catalogs,"

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as hereinbefore mentioned, said respondents, by means of letters transmitted by United States mails, by and through the solicitation of the respondent, Marcus A. Crews, in cooperation with said other three respondents, and by and through salesmen working under his direction, and by various other means, have, directly and indirectly, made to American manufacturers, in order to induce them to purchase said printed advertising matter, representations and implications, typical of which are the following:

1. That a definite demand existed from the foreign customers of each of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., for the merchandise made by the American manufacturers whose "Displays" were accepted for insertion in the "Export Catalogs" of said respondents.

2. That the American manufacturers whose "Displays" were inserted in the respective "Export Catalogs" of respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., would have good reason to expect that said respondents would each purchase for their foreign customers a considerable quantity of the merchandise of said manufacturers.

3. That the "Export Catalogs" of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., containing "Displays" of American manufacturers, were each permanent catalogs; that each constituted and would be a valuable sales help to their foreign representatives living in the more important trade centers abroad; that each of such catalogs, as used by said respondents and their foreign representatives, was an important feature in their established and usual method of securing foreign business; and that the use of such catalogs had resulted in the consummation of an important part of the sales of each of said respondents of American merchandise to their foreign customers.

4. That the operation of the business of each of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., had been, and was, dependent upon foreign business received by them through the use of their "Export Catalogs" containing "Displays" of merchandise made by American manufacturers.

5. That the insertion by American manufacturers of their "Displays" in the respective "Export Catalogs" of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., and the furnishing by them to said respondents of their price lists and the descriptive material ordinarily used by them in the sale of their merchandise, would enable said respondents to sell the merchandise of said manufacturers directly abroad to the respective foreign customers of said respondents; and that such arrangement would act as an economical means to said manufacturers of securing foreign business and result in profit to them.

6. That the money required to be paid by the manufacturers pursuant to agreements entered into by them covering the insertion of their "Displays" in the "Export Catalog" of the respondent, Eggers & Heinlein, Inc., and in the "Export Catalog" of the respondent, Middleton & Co., Ltd., was for the purpose of paying to the respondent, Neo Gravure Printing Co., Inc., its ordinary and reasonable charges for the work performed by said last named respondent in the printing of 25,000 copies of the "Displays" of such manufacturers suitable for binding in the "Export Catalog" of the respondent, Eggers & Heinlein, Inc., and in the "Export Catalog" of the respondent, Middleton & Co., Ltd.

7. That the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., would pay the cost of layouts, translations, copy, binding, covers, addressing, and

postage incident to the publication, compilation, delivery, and distribution abroad of 25,000 copies of an "Export Catalog" containing the "Displays" of the manufacturers entering into agreements for the insertion of their "Displays" in said catalog, a part of said number of copies to be bound as the "Export Catalog" of the respondent, Eggers & Heinlein, Inc., and the balance of said copies to be bound as the "Export Catalog" of the respondent, Middleton & Co., Ltd.

8. That Marcus A. Crews, and M. A. Crews Co. and Pioneer Exporters, trade names used by the respondent, Marcus A. Crews, were connected with a department of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., and that such department constituted a useful and practical facility in the making of sales abroad of American merchandise through the respective foreign sales organizations of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd.

PAR. 4. The representations and implications contained in paragraph 3 hereof were made, as aforesaid, by all of the respondents for a period of time, and from time to time, prior to the early part of 1940. About the end of March 1940 the respondent, Middleton & Co., Ltd., withdrew from the cooperative arrangement which the respondents had, as aforesaid, for the selling of printed advertising matter, hereinbefore called "Manufacturers' Displays," and for the issuance, as aforesaid, of "Export Catalogs." Thereafter the remaining respondents continued said arrangement, and thereafter continued to make the representations and implications contained in paragraph 3, except that thereafter no mention was made by said remaining respondents of Middleton & Co., Ltd., its name, or its "Export Catalogs." Thereafter it was represented that there would be issued 25,000 copies of the "Export Catalog" of the respondent, Eggers & Heinlein, Inc., containing the "Displays" of the American manufacturers entering into agreements for the insertion of their displays in said catalog.

PAR. 5. The representations and implications set out in paragraph 3 hereof, and others of similar import and meaning, were used by respondents to induce, and did induce, a large number of American manufacturers to believe that the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., would be able to sell and would sell to their foreign customers large quantities of the merchandise made by each of the manufacturers whose "Displays" were inserted in the "Export Catalogs" of said last named respondents. As a result of the belief thus engendered a large number of American manufacturers were induced to pay, and did pay, to the respondent, Neo Gravure Printing Co., Inc., large sums of money, and to expend, and did expend, additional large sums of money in connection with agreements entered into by them covering the printing of their "Displays" for insertion in said "Export Catalogs." They were also thus induced to commission, and did commission, said respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., to sell their merchandise abroad.

All of said representations and implications were, and are, grossly exaggerated, deceptive, false, and misleading.

At the times that such representations and implications were made, as aforesaid, no foreign market or demand existed, or was then likely to exist, for any of the merchandise made by many of the American manufacturers whose "Displays" were accepted for insertion in the "Export Catalogs" of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd. Much of the merchandise described in the "Displays" inserted in said catalogs has not, at any time heretofore mentioned, been salable abroad, as no foreign market or demand has existed for said merchandise. Neither of said last-named respondents has had any foreign customers to whom any amount of the merchandise of some of the American manufacturers could be sold.

The business of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., was so organized and operated that the representations and implications made, as herein found, were grossly deceptive and were likely to lead the American manufacturers, whose "Displays" were accepted for insertion in their "Export Catalogs," to expect that said respondents, or either of them, would purchase for their foreign customers an appreciable amount of the merchandise of the said American manufacturers. Said "Export Catalogs" were in no sense permanent catalogs which could be used permanently by said last-named respondents and were not susceptible of being used as an effective sales help by their foreign representatives or as a workable feature in the established and usual method of securing foreign business followed by said last-named respondents. The use of such a catalog by said last-named respondents was not likely to result and has not resulted, in the consummation of any material part of the sales abroad of American merchandise by either of said last-named respondents.

The fact is that "Export Catalogs" containing "Manufacturers' Displays" do not play, and have never played, an essential part in the making of sales abroad of American merchandise by either of said last-named respondents or by their respective foreign representatives. Such catalogs have been of no practical value as sales aids to the foreign representatives of said respondents. The businesses of said respondents have never been dependent upon the use of such a catalog.

The truth is that the money which the American manufacturers paid to the respondent, Neo Gravure Printing Co., Inc., pursuant to agreements entered into by them covering the insertion of their "Displays" in said "Export Catalogs" of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., was not used solely for the purpose of paying to the respondent, Neo Gravure Printing Co., Inc., its ordinary and reasonable charges for the work performed by it in the

printing of said "Displays." Only a part of such money was required by said respondent to cover its charges for such printing. Said respondent retained a considerable part of said money to pay the cost of lay-outs, translations, copy, binding, covers, addressing, and postage incident to the publication, compilation, delivery, and distribution abroad of the "Export Catalogs" containing said "Displays." A part of said money was given to the respondent, Marcus A. Crews, as a reward or commission for the obtaining by him and by the salesman working under his direction of said agreements of said American manufacturers. A considerable portion of said money was also paid to the respondent, Eggers & Heinlein, Inc., as a reward or commission for permitting the publication of said "Export Catalog" under its name, while the respondent, Middleton & Co., Ltd., received none of said money for permitting said catalog to be published under its name. Neither the respondent, Eggers & Heinlein, Inc., nor the respondent, Middleton & Co., Ltd., paid any of the costs incident to the publication, compilation, delivery, and distribution abroad of any of said "Export Catalogs" or the costs of any lay-outs, translations, copy, binding, covers, addressing, or postage incident thereto.

In truth and in fact, the cooperative arrangement entered into by the respondents aforesaid under which sales were made of said printed advertising matter was entered into and carried out by said respondents for the purpose of making a profit from the sale thereof and not for the purpose of making it possible, through the use of such catalogs or otherwise, to sell abroad the merchandise manufactured by the American manufacturers to whom said printed advertising matter was sold. The only connection which the respondent, Marcus A. Crews, has ever had with either of the respondents Eggers & Heinlein, Inc., or Middleton & Co., Ltd., or any department of said respondents, has been in the sale of said "Manufacturers' Displays" and in the issuance of said "Export Catalogs."

PAR. 6. The use by the respondents of the acts and practices hereinabove mentioned in connection with the sale, offering for sale, and distribution of "Manufacturers' Displays" and "Export Catalogs" in commerce, as hereinbefore set out, has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations and implications aforesaid are true, when, in fact, they are not true, and causes many members of the purchasing public, because of said mistaken and erroneous belief, to purchase said "Manufacturers' Displays."

Order

30 F. T. C.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, Eggers & Heinlein, Inc., Middleton & Co., Ltd., and Marcus A. Crews, and upon stipulations as to the facts entered into between these respondents and respondent, Neo Gravure Printing Co., Inc., and Richard P. Whiteley, assistant chief counsel for the Commission, providing that without further evidence or other intervening procedure the Commission might issue and serve upon said respondents findings as to the facts and conclusion based thereon and an order disposing of the proceeding (the proceeding having heretofore been dismissed as to respondent, Cuneo Press, Inc.); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Neo Gravure Printing Co., Inc., a corporation; Eggers & Heinlein, Inc., a corporation; Middleton & Co., Ltd., a corporation; their officers; and Marcus A. Crews, individually, and trading as M. A. Crews Co. and as Pioneer Exporters, or trading under any other name, and respondents' agents, representatives, 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 advertising matter, sometimes called "Manufacturers' Displays," and catalogs, sometimes called "Export Catalogs," do forthwith cease and desist from representing, directly or by implication:

1. That there is a demand from foreign customers of respondent, Eggers & Heinlein, Inc., or respondent, Middleton & Co., Ltd., for the products sold by manufacturers solicited for advertising to be inserted in said catalogs, or that the operation of the business of said respondents is dependent upon foreign business received by them through the use of such catalogs.

2. That display advertising in "Export Catalogs" of respondent, Eggers & Heinlein, Inc., or respondent, Middleton & Co., Ltd., will result in the sale of any substantial quantities of the products of any American manufacturer.

3. That said "Export Catalogs" are permanent catalogs or constitute an important feature of the established method used by respondent, Eggers & Heinlein, Inc., or respondent, Middleton & Co., Ltd., in securing business from foreign customers, or that the use of such catalogs has resulted in an important part of the sales of American merchandise made by said respondents.

4. That the money paid by manufacturers for insertion of display advertising in respondents' "Export Catalogs" is to be used only for the purpose of paying printing charges, when a part of the money so received is used to pay salesmen's commissions or commissions to respondents in whose names such catalogs are issued, or in payment for lay-outs, translations, copies, bindings, postage, or other costs of manufacturing or distribution.

5. That respondent, Marcus A. Crews, is connected with the export department of respondent, Eggers & Heinlein, Inc., or respondent, Middleton & Co., Ltd., or of any other exporter selling merchandise to foreign buyers, or that such department constitutes a useful facility in the sale of merchandise by said respondents to their foreign customers.

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.

IN THE MATTER OF
THE WIRE ROPE & STRAND MANUFACTURERS ASSOCIATION, INC., ET AL.

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

Docket 4443. Complaint, Jan. 3, 1941—Decision, May 25, 1943

Where 15 member corporations of an association originally organized to meet the requirements of the National Industrial Recovery Act, which (1) were engaged in the manufacture and interstate sale and distribution of ordinary nonpatented wire rope, comprising about 80 to 85 percent of the total volume of wire rope produced by them, to distributors and dealers and also direct to users, including various Federal, state, and municipal governmental agencies, at delivered prices; which (2) together did about 85 percent of all such business in the United States, with only two competitors; and (3) were in competition with one another and with the two concerns above referred to, except insofar as such competition had been restricted or forestalled as below set forth; and which (4) to the extent that they acted collusively and collectively in the pricing and distribution of wire rope in the United States, were in a position to dominate and control prices for the product involved; acting concertedly—

- (a) Following the filing of list prices and discounts with the Code Authority under the National Recovery Act—which gradually became uniform, with the consequence that resulting delivered prices on May 27, 1935, the date of the Schechter Supreme Court decision invalidating the act referred to, were uniform—acquiesced in a practice by three of their number (smaller manufacturers) under which such manufacturers sold their wire rope at an additional 5 percent chain discount;
- (b) Published, after the adoption of the code and notwithstanding the rejection by the Administrator of a proposal so to do, their list price schedules, sales terms, and base and chain discounts, with the effect of making in each case complete delivered sales prices;
- (c) Continued, at the time of the adoption of the code, their practice of quoting and selling only on a delivered zone basis;
- (d) Filled a formula setting forth in detail the method for the order in which base and chain discounts—i. e., respectively, discounts from list prices and special discounts to different classes of customers—were to be applied and the number of decimals to be used in developing net delivered prices, and continued use of said formula after the Schechter decision; and continued also to publish and allow the same chain discounts to all classes of customers except governmental agencies as were allowed on May 27, 1935;
- (e) From July 13, 1935, on, by common understanding, allowed the Federal Government, in sealed bids, a chain discount which exceeded that published by them on aforesaid date by a uniform amount and which was the same for all with the exception of aforesaid three smaller manufacturers who allowed a greater discount; and in September 1935, changed the chain discounts allowed to states and counties—which theretofore differed from