

Syllabus

IN THE MATTER OF

J. P. RAINEY TRADING AS J. P. RAINEY & COMPANY¹

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

Docket 4800. Complaint, Aug. 6, 1942—Decision, Oct. 9, 1944

Where an individual engaged in city concerned in the electrical contracting business and in purchasing in said capacity and as agent of a general contractor below referred to, electrical equipment and supplies, including electric cable, wire, switches, conduits, fittings, condulets, potheads, cable heads, transformers, insulators, lighting fixtures, lamps and accessories, from three certain concerns and others, and in competition in making and seeking to make purchases and sales in commerce, with sellers of such products, except insofar as said competition had been restricted or forestalled as below set forth;

Following arrangements by the Navy with a shipbuilding company under which latter was to undertake construction of naval vessels and pursuant to which (1) the Navy agreed to arrange for the advancing of the necessary funds to rehabilitate the latter's shipyards in the city concerned, including office buildings and shipways, to be expended under the general supervision of the Navy and subject to its approval, and (2) said shipbuilding company contracted with the aforesaid general contractor for the reconstruction by him of said office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that, in securing materials or services he would obtain competitive offers from as many as practicable but not less than two—or three where specified—reputable firms and award a contract to the firm quoting the minimum price; bids to be opened by or in the presence of the Supervisor of Shipbuilding of the Navy or his representative, and to be subject to his approval before award of the sub-contract—

Engaged in the general practice of preparing and submitting different and purportedly competitive, but in fact non-competitive, bids and price quotations in the purchase and sale of said products in commerce; and as a part of said practice, in addition to his bid, submitted over his own signature as his proposal to furnish several items of electric wire and cable to said general contractor for aforesaid use, prepared and submitted two additional bids, on stationery bearing the letter-heads, and over names of two of aforesaid three certain concerns, respectively proposing to furnish the same items but at total amounts which exceeded by some \$400 the amount quoted by him in his own bid, and through thus quoting the minimum price received the contract;

With intent and result of deceiving and misleading officials of said shipbuilding company and representatives of the Navy Supervisor of Ships, into believing, considering and approving the aforesaid bids purportedly made by said individual, and aforesaid two concerns, as independent, genuine and competitive bids; and with the effect of depriving buyers and prospective buyers, including contractors and subcontractors with the United States Government, of the benefit of competition in commerce between said individual, the three concerns aforesaid, and others:

¹ The instant case is one of a group of eight having to do with the preparation and submission of sham, false, fictitious, fraudulent and non-competitive bids in connection with the Navy's arrangement for the construction of ships by the Cramp Shipbuilding Co., at its shipyards in Philadelphia. For list of these cases, see footnote to the case of the Grater-Bodey Co., et al., Docket 4799, p. 113.

Complaint

39 F. T. C.

Held, That such acts, practices and methods, under the circumstances set forth, were all to the prejudice of the public; had a dangerous tendency to and did actually restrain and eliminate competition in the sale of electrical supplies and equipment in commerce; had the tendency and capacity to and did unreasonably restrain commerce in said products; and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. Everette MacIntyre and Mr. V. W. Summers for the Commission.
Mr. James F. Masterson, of Philadelphia, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that J. P. Rainey, an individual, trading as J. P. Rainey & Co., named in the caption hereof and more particularly hereinafter described and referred to as respondent, has violated the provisions of Section 5 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. Respondent, J. P. Rainey, is an individual, engaged in the electrical contracting business and trading as J. P. Rainey & Company, 511 North Broad Street, Philadelphia, Pa. Said respondent, during the period covered by the activities involved in the charges in this complaint, also served as an employee, agent, and sub-contractor of one Charles F. Rohleder more particularly and fully hereinafter described.

PAR. 2. Charles F. Rohleder is an individual, engaged in general contracting and construction work, with office and principal place of business located at Philadelphia, Pa.

Allen McLaine Ward, and J. R. Baldrige, Jr., during the period covered by the activities involved in the charges of this complaint served as employees and agents of Charles F. Rohleder.

PAR. 3. At all times hereinafter mentioned, Charles F. Rohleder, directly and through his agents, Allen McLaine Ward, J. R. Baldrige, Jr., and respondent, J. P. Rainey, has been engaged in negotiating with and buying from Westinghouse Electric Supply Co., 1101 Race Street, Philadelphia, Pa., Anaconda Wire and Cable Co., 1301 Architects Building, Philadelphia, Pa., and General Cable Corporation, 123 South Broad Street, Philadelphia, Pa., directly and through their agents, "electrical equipment and supplies" which were shipped from many points located in States other than the State of Pennsylvania by the sellers or their suppliers to Charles F. Rohleder or his said agents at Cramp Shipbuilding Co. shipyards, Richmond and Norris Streets, Philadelphia, Pa.

At all times hereinafter mentioned, respondent, J. P. Rainey, doing business as J. P. Rainey & Co., has been engaged in the electrical contracting business and in that capacity, and also as an agent of Charles F. Rohleder, has purchased electrical supplies and equipment from Westinghouse Electric Supply Co., Anaconda Wire and Cable Co., and General Cable Corporation and others, and has sold and caused such electrical supplies

and equipment to be shipped from locations in States other than the State of Pennsylvania to him in Philadelphia, Pa.

PAR. 4. Respondent J. P. Rainey, an individual trading as J. P. Rainey & Co., at times within the period named in paragraph 7 hereof, engaged in competition with sellers of "electrical equipment and supplies" in making and seeking to make purchases and sales in "commerce" (as "commerce" is defined in the Federal Trade Commission Act), between and among the various States of the United States, except insofar as the said competition has been hindered, lessened, restricted or forestalled by the acts, things, practices, policies and methods done and carried on as hereinafter set forth.

PAR. 5. The term "electrical equipment and supplies" as used herein includes, but is not limited to, such items as electric cable, electric wire, electric switches, electric conduit, fittings, condulets, potheads, cableheads, transformers, insulators, lighting fixtures, lamps and accessories.

PAR. 6. During 1940, as a part of its work in the Defense Program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities at the said shipyard, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co. contracted with said Charles F. Rohleder for the latter to reconstruct certain office buildings and shipways on a cost plus a fixed fee basis, with the understanding that the said Rohleder in securing materials and services would obtain competitive offers from as many as practicable, but not less than two (and not less than three where specified) reputable firms in a position to provide the material, equipment, services, etc., as required at a reasonable cost, and to award contract to that firm quoting the minimum price; and with the further understanding that the said offers, proposals or bids were to be opened by or in the presence of the Supervisor of Shipbuilding, U. S. Navy, or his representative, and subject to his approval before award of the subcontract for materials, equipment or services.

In connection with his aforesaid contract with Cramp Shipbuilding Co., said Charles F. Rohleder negotiated with and made awards of contracts for the purchase, directly and through agents, of "electrical equipment and supplies" from respondent, J. P. Rainey, Westinghouse Electric Supply Co., Anaconda Wire and Cable Co., General Cable Corporation and others.

PAR. 7. Respondent, J. P. Rainey, has engaged in the practice of preparing and submitting different and purportedly competitive but in fact non-competitive bids and price quotations in the purchase and sale of "electrical equipment and supplies" in commerce and as a part of that practice, on or about March 18, 1941, said respondent prepared a bid and price quotation over his signature as and for his proposal to furnish several items of electric wire and cable to Charles F. Rohleder for use in rehabilitating the facilities of Cramp Shipbuilding Co. shipyards, Norris and Richmond Streets, Philadelphia, Pa., at the stated price of \$29,280.12. On or

about the same date said respondent also submitted two additional bids, one each on stationery bearing the letterheads, and over the respective names of General Cable Corporation, and Anaconda Wire & Cable Co., proposing to furnish to said Charles F. Rohleder the same items specified in the said bid he submitted over his name. However, before said respondent submitted the said bids over the names of the said General Cable Corporation and said Anaconda Wire Co., he so fixed the amount quoted in the Anaconda Wire & Cable Co. bid that it amounted to \$29,673.40, or 1¢ higher than the amount quoted in the General Cable Corporation bid and approximately \$400.00 higher than the amount quoted in the bid said respondent submitted over his own name. As a result of such action, said Rainey, in so quoting the minimum price received a contract to furnish the above described "electrical equipment and supplies" and caused the same to be shipped across State lines into Philadelphia, Pa.

Said J. P. Rainey, submitted the aforesaid bids, for the purpose and with the result of deceiving and misleading purchasing officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy, into believing, considering and approving the aforesaid bids and price quotations purporting to have been made by J. P. Rainey, Anaconda Wire & Cable Co., and General Cable Corporation as independent, genuine and competitive bids.

PAR. 8. The doing and performing of the aforesaid acts, things, and the use of the methods set forth in the immediately preceding paragraph hereof, tend to have and do have the effect of depriving buyers and prospective buyers including contractors and sub-contractors with the United States Government of the benefit of competition in commerce between and among the said J. P. Rainey, Westinghouse Electric Supply Co., Anaconda Wire & Cable Co., General Cable Corporation, and between them and others.

PAR. 9. The acts, practices and methods, as hereinbefore alleged, are all to the prejudice of the public; have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained and eliminated competition in the sale of electrical supplies and equipment in commerce within the intent and meaning of the Federal Trade Commission Act; have the tendency and capacity to restrain unreasonably and have restrained unreasonably such commerce in such products; and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 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 6, 1942, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. After the issuance of the said complaint and filing of the respondent's answer, the Commission, by order entered herein, granted the request of respondent for permission to

withdraw his answer and to substitute therefor an answer admitting all of the material allegations set forth in the said complaint and waiving all intervening procedure and hearings, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint and the said substitute answer; 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, J. P. Rainey, is an individual, engaged in the electrical contracting business and trades as J. P. Rainey & Co., 511 North Broad Street, Philadelphia, Pa. Said respondent, during the period covered by the activities hereinafter specified, also served as an employee, agent, and subcontractor of one Charles F. Rohleder, more particularly and fully hereinafter described.

PAR. 2. Charles F. Rohleder is an individual engaged in general contracting and construction work, with his office and principal place of business located at Philadelphia, Pa.

Allen McLaine Ward and J. R. Baldrige, Jr., during the period covered by the activities hereinafter specified, served as employees and agents of Charles F. Rohleder.

PAR. 3. At all times hereinafter mentioned, Charles F. Rohleder, directly and through his agents, Allen McLaine Ward, J. R. Baldrige, Jr., and respondent, J. P. Rainey, has been engaged in negotiating with and buying from Westinghouse Electric Supply Co., 1101 Race Street, Philadelphia, Pa.; Anaconda Wire & Cable Co., 1301 Architects Building, Philadelphia, Pa.; and General Cable Corporation, 123 South Broad Street, Philadelphia, Pa., directly and through their agents, "electrical equipment and supplies" which were shipped from many points located in States other than the State of Pennsylvania by the sellers or their suppliers to Charles F. Rohleder or his said agents at Cramp Shipbuilding Co. shipyards, Richmond and Norris Streets, Philadelphia, Pa.

At all times hereinafter mentioned, respondent, J. P. Rainey, doing business as J. P. Rainey & Co., has been engaged in the electrical contracting business, and in that capacity and also as an agent of Charles F. Rohleder has purchased electrical supplies and equipment from Westinghouse Electric Supply Co., Anaconda Wire & Cable Co., and General Cable Corporation, and others, and has sold and caused such electrical supplies and equipment to be shipped from locations in States other than the State of Pennsylvania to him in Philadelphia, Pa.

PAR. 4. Respondent, J. P. Rainey, trading as J. P. Rainey & Co., at times within the period named in paragraph 7 hereof engaged in competition with sellers of "electrical equipment and supplies" in making and seeking to make purchases and sales in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States; except insofar as the said competition has been hindered, lessened, restricted, or forestalled by the acts, things, practices, policies, and methods done and carried on, as hereinafter set forth.

PAR. 5. The term "electrical equipment and supplies" as used herein includes, but is not limited to, such items as electric cable, electric wire, electric switches, electric conduit, fittings, condulets, potheads, cable-heads, transformers, insulators, lighting fixtures, lamps, and accessories.

PAR. 6. During 1940, as a part of its work in the defense program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities at the said shipyard, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co. contracted with said Charles F. Rohleder for the latter to reconstruct certain office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that the said Rohleder in securing materials and services would obtain competitive offers from as many as practicable but not less than two (and not less than three where specified) reputable firms in a position to provide the material, equipment, services, etc., as required, at a reasonable cost, and to award contract to that firm quoting the minimum price; and with the further understanding that the said offers, proposals, or bids were to be opened by or in the presence of the Supervisor of Shipbuilding, U. S. Navy, or his representative, and subject to his approval before award of the subcontract for materials, equipment, or services.

In connection with his aforesaid contract with Cramp Shipbuilding Co., said Charles F. Rohleder negotiated with and made awards of contracts for the purchase, directly and through agents, of "electrical equipment and supplies" from respondent, J. P. Rainey, Westinghouse Electric Supply Co., Anaconda Wire & Cable Co., General Cable Corporation, and others.

PAR. 7. Respondent, J. P. Rainey, has engaged in the practice of preparing and submitting different and purportedly competitive but in fact noncompetitive bids and price quotations in the purchase and sale of "electric equipment and supplies" in commerce, and as a part of that practice, on or about March 18, 1941, said respondent, prepared a bid and price quotation over his signature as and for his proposal to furnish several items of electric wire and cable to Charles F. Rohleder for use in rehabilitating the facilities at Cramp Shipbuilding Co. shipyards, Norris and Richmond Streets, Philadelphia, Pa., at the stated price of \$29,280.12. On or about the same date said respondent also submitted two additional bids, one each on stationery bearing the letterheads and over the respective names of General Cable Corporation and Anaconda Wire & Cable Co., proposing to furnish to said Charles F. Rohleder the same items specified in the said bid he submitted over his name. However, before said respondent submitted the said bids over the names of the said General Cable Corporation and said Anaconda Wire Co., he so fixed the amount quoted in the Anaconda Wire & Cable Co. bid that it amounted to \$29,673.40, or 1¢ higher than the amount quoted in the General Cable Corporation bid and approximately \$400 higher than the amount quoted in the bid said respondent submitted over his own name. As a result of such action, said Rainey, in so quoting the minimum price, received a contract to furnish

the above-described "electrical equipment and supplies" and caused the same to be shipped across State lines in Philadelphia, Pa.

Said J. P. Rainey, submitted the aforesaid bids, for the purpose and with the result of deceiving and misleading purchasing officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy, into believing, considering, and approving the aforesaid bids and price quotations purporting to have been made by J. P. Rainey, Anaconda Wire & Cable Co., and General Cable Corporation as independent, genuine, and competitive bids.

PAR. 8. The doing and performing of the aforesaid acts and things, and the use of the methods set forth in the immediately preceding paragraph hereof, tend to have, and do have, the effect of depriving buyers and prospective buyers, including contractors and subcontractors with the United States Government, of the benefit of competition in commerce between and among the said J. P. Rainey, Westinghouse Electric Supply Co., Anaconda Wire & Cable Co., and General Cable Corporation, and between them and others.

CONCLUSION

The acts, practices, and methods, as hereinbefore found, are all to the prejudice of the public; have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the sale of electrical supplies and equipment in commerce within the intent and meaning of the Federal Trade Commission Act; have the tendency and capacity to restrain unreasonably, and have restrained unreasonably, such commerce in such products; and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 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 and the answer of the respondent, in which answer respondent admits all of the material allegations set forth in said complaint and waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of Section 5 of the Federal Trade Commission Act.

It is ordered, That the respondent, J. P. Rainey, individually, and trading as J. P. Rainey & Co., or trading under any other name, and his 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 electric cable, electric wire, electric switches, electric conduit, fittings, condulets, potheads, cableheads, transformers, insulators, lighting fixtures, lamps, accessories, or other electrical equipment or supplies, do forthwith cease and desist from doing or performing any of the following acts, things, or practices:

1. Submitting or procuring, assisting, or cooperating in the submission to any buyer of multiple bids or price quotations for the same materials for use on the same project but in the names of different or apparently different prospective sellers.

2. Aiding, assisting, or cooperating in any manner in the submission of any sham, fictitious, fraudulent, or noncompetitive bids or price quotations to any buyer or prospective buyer, or to any official or awarding authority of any Federal agency or to any one acting for or on its behalf, or for or on behalf of any contractor with such agency.

3. Interfering with or assisting in interfering with the procurement or consideration of genuinely competitive bids or price quotations by any Federal agency or any official or awarding authority of such agency, or by any buyer or prospective buyer.

4. Promoting, establishing, carrying out, or continuing any act or practice for the purpose or with the effect of maintaining or presenting a false appearance of competition between or among sellers in the submission of price quotations or bids to buyers or prospective buyers.

5. Arranging or attempting to arrange for the filing of any bid in the name of one ostensibly competent bidder when the prices and terms are in fact determined by some other bidder or when in fact the bid is not a bona fide bid.

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

Syllabus

IN THE MATTER OF

DELMAR M. RANDALL, DOING BUSINESS AS THE COLRAN
INSTITUTE, AND MERVYON E. RANDALLCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4886. Complaint, Jan. 14, 1943—Decision, Oct. 9, 1944*

As respects the remedying of wrinkles and lines in the face and neck, it has been established that these are not due to any condition of the muscles but are due to the fact that as one grows older the skin tends to lose its elasticity, with the result that it sags, causing wrinkles and lines to develop, the only recognized or effective treatment for which is through a "face lifting" operation, whereby a portion of the skin is removed and the remainder drawn together, there being no way known to science aside from surgery whereby the skin can be caused to shrink.

Where a husband and wife engaged in the interstate sale and distribution of their "Colran Method" of face lifting without surgery or "Colran Method of nonsurgical rejuvenation," consisting of (1) an electrical device which they designated as "The Electrical Face Rejuvenator," and (2) a small machine with two electrodes attached, designated "The Colran Electro-Lifter," and (3) cosmetic preparations designated as "Cleansing Oil," "Contact Solution," "Special Cleansing Solution" and "Conditioning Oil," function of which was to cleanse the skin and facilitate contact between it and the electrodes; through statements in their advertisements in newspapers and periodicals, circulars, leaflets and other advertising media (in which they also included depictions purporting to illustrate the benefits resulting from the use of their said method), directly or by implication—

(a) Represented that through use thereof face lifting could be accomplished without resort to surgery; that wrinkles, lines, and sagging skin in the face and neck could be eliminated and replaced with revitalized, youthful skin; that it would restore to user's face the contour of youth and eliminate the signs of age; and would rejuvenate the skin of the face and neck through rebuilding and strengthening the muscles underlying the skin, assertedly attached thereto, and, through a natural form of exercise automatically tighten and fill out the same;

The facts being that face lifting can be accomplished only through a surgical operation; muscles of the face and neck are not attached to the skin, but to underlying tissue and fat; any activation of such muscles which might be caused by their device would be wholly ineffective insofar as contraction of the skin is concerned, and their said method could not bring about the result claimed; and

(b) Falsely represented or implied, through use of the words "rejuvenator" and "lifter" in their trade names, that their said "method" would rejuvenate the skin and accomplish the result known as face lifting;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature, properties, and efficacy of their products, and thereby cause it to purchase substantial quantities thereof:

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. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.