

Syllabus

IN THE MATTER OF

FEDERAL MILITARY EQUIPMENT CORP. AND HARRY
DRATH, MAX SCHWARTZ, AND AL B. WOLFCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5096. Complaint, Dec. 11, 1943—Decision, Mar. 26, 1947*

Where a corporation, and three individuals who owned, dominated and managed it, acting with practically the same freedom as though no corporation existed, and who, in carrying on business as partners and in operating a number of retail stores, made use interchangeably of the corporate and trade names below set forth; engaged in the interstate sale and distribution of military insignia similar to those required by the United States government for its military personnel, and of clothing and novelties—

- (a) Falsely represented through the use of the corporate name Federal Military Equipment Corporation and the trade name Federal Military Equipment Co., on their stationery, letterheads, billheads, envelopes, requisition blanks, and other advertising media, that their business was an agency or representative of, or in some manner connected with, the military forces or Government of the United States; and
- (b) Represented through the use of the word "manufacturers" on their letterheads and by other means, that they owned, operated or controlled a factory or factories where their merchandise was made and that they were the manufacturers thereof;

The facts being that they neither owned, operated or controlled a factory wherein was made any substantial portion of their merchandise, which they purchased from others, and they were not manufacturers, with whom, rather than wholesalers, jobbers, or other dealers, many of the purchasing public prefer to deal by reason, among others, of the apprehended opportunities to secure lower prices and other advantages;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that their business was connected with the military forces or government of the United States, and that they were the manufacturers of their merchandise, and thereby into the purchase of substantial quantities thereof:

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.

Before *Mr. Miles J. Furnas* and *Mr. Charles B. Bayly*, trial examiners.

Mr. Joseph Callaway for the Commission.

Mr. Benjamin Cohen, of New York City, for respondents.

Complaint

43 F. T. C.

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 Federal Military Equipment Corp., a corporation, and Harry Drath, Max Schwartz and Al B. Wolf, individually and as officers and directors of Federal Military Equipment Corporation, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Federal Military Equipment Corp. is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business at No. 33 Union Square, New York, N. Y.

Respondents Harry Drath, Max Schwartz, and Al B. Wolf, are individuals and members of the board of directors of, and president, secretary-treasurer and vice president, respectively, of said corporation. They direct the policies and are responsible for the operation and management of respondent Federal Military Equipment Corp. These individual respondents are also copartners trading and doing business under various trade names, including the names Federal Military Equipment Co., Federal Military Store, and Federal Army Store. The principal place of business of the individual respondents and of said partnership is also No. 33 Union Square, New York, N. Y.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of military insignia, clothing, and novelties, doing business indiscriminately in the name of the corporation and the various trade names used by the partnership.

In the course and conduct of their said business, the respondents cause said merchandise, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise 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 said business, respondents have made and are making certain false and misleading representations as to their business status. By soliciting the sale of and selling and distributing their merchandise under the corporate name

Federal Military Equipment Corp. and under the trade names Federal Military Equipment Co., Federal Military Store, and Federal Army Store, and by using said corporate name and said trade names on their stationery, letterheads, billheads, envelopes, requisition blanks, and other advertising media, respondents directly and by implication represent that the business operating under the respective names is an agency or representative of, or in some manner connected with, the military forces or Government of the United States. In truth and in fact, neither the respondent corporation, the partnership, nor any of the individual respondents is an agency or a representative of, or in any manner connected with, the military forces or Government of the United States.

PAR. 4. Among the articles of merchandise offered for sale and sold by the respondents in commerce as aforesaid are articles similar in make and in design to those required by the United States Government to be worn by the personnel of its military forces.

PAR. 5. The use of the corporate name, Federal Military Equipment Corp., and of the trade names Federal Military Equipment Co., Federal Military Store, and Federal Army Store by the respondents in their business and on their letterheads, billheads, envelopes, requisition blanks, and other advertising in connection with the offering for sale and sale of their merchandise in commerce, has had and now 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 business operated by respondents is an agency or representative of, or in some manner connected with, the military forces or Government of the United States, and into the purchase of substantial quantities of respondents' merchandise in commerce because of such erroneous and mistaken belief.

PAR. 6. The respondents have made other false and misleading representations as to their business status in connection with the sale and offering for sale of their merchandise. Through the use of the word "manufacturers" on their letterheads and by other means, respondents have represented and are now representing that they own, operate, or control a factory or factories where their merchandise is manufactured, and that they are the manufacturers of such merchandise. In truth and in fact, neither the corporate respondent nor any of the individual respondents own, operate, or control a factory wherein is manufactured any substantial portion of the merchandise offered for sale and sold by respondents. The respondents purchase all of the merchandise offered for sale and sold from others.

PAR. 7. There is a preference on the part of a substantial portion of the purchasing public for dealing directly with the manufacturer

Findings

43 F. T. C.

of products rather than with wholesalers, jobbers, or other dealers, such preference being due in part to a belief that by dealing directly with the manufacturer, lower prices, and other advantages may be obtained.

PAR. 8. The use by the respondents of the word "manufacturers" on their letterheads and otherwise, as hereinbefore alleged, has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the respondents are the manufacturers of their merchandise and own, operate, or control the plant or plants where such merchandise is manufactured and into the purchase of substantial quantities of respondents' merchandise in commerce because of such erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the 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 December 11, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, Federal Military Equipment Corp., a corporation, and Harry Drath, Max Schwartz, and Al B. Wolf, individually and as officers and directors of Federal Military Equipment Corp., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the answer of respondents thereto, testimony, and other evidence in support of and in opposition to the allegations of said complaint were taken before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony, and other evidence, report of the trial examiner upon the evidence, and brief filed in support of the complaint (the respondents not having filed brief or requested oral argument); 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, Federal Military Equipment Corp., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business at No. 33 Union Square, New York, N. Y.

Respondents, Harry Drath, Max Schwartz, and Al B. Wolf, are individuals and officers and directors of respondent corporation and the owners of all the capital stock of said respondent corporation. The said individual respondents organized the respondent corporation in 1941, and since said date said individual respondents have owned, dominated, and managed said respondent corporation and have acted with practically the same freedom as though no corporation existed. In addition, said individual respondents, as copartners, have traded under the name of Federal Military Equipment Co. In the course and conduct of their business, the individual respondents have used the corporate and the trade name interchangeably. When their suppliers refused to extend credit to the corporate entity, the individual respondents purchased from such suppliers in the name of the copartnership. Said individual respondents, as copartners, also owned and operated a number of retail stores. In the operation of such retail stores, the respondents used the trade names of Federal Military Store and Federal Army Store.

PAR. 2. For several years last past the respondents have been engaged in the sale and distribution of military insignia, clothing, and novelties. The articles of military insignia sold by the respondents are similar in make and in design to those required by the United States Government to be worn by the personnel of its military forces. Respondents cause said merchandise, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their said business the respondents have solicited the sale of, and have sold and distributed, their merchandise under the corporate name Federal Military Equipment Corp. and under the trade name Federal Military Equipment Co., and by using said corporate name and said trade name on their stationery, letterheads, billheads, envelopes, requisition blanks, and other advertising media the respondents have directly and by implication represented that the business operating under the respective names is an agency or representative of, or in some manner connected

with, the military forces or Government of the United States. In truth and in fact, neither the respondent corporation, the partnership, nor any of the individual respondents is an agency or a representative of, or in any manner connected with, the military forces or Government of the United States.

The use of the corporate name Federal Military Equipment Corp. and the trade name Federal Military Equipment Co. by the respondents in their business and on their letterheads, billheads, envelopes, requisition blanks, and other advertising in connection with the offering for sale and sale of their merchandise in commerce has had, and now has, the capacity and tendency to mislead and deceive purchasers into the erroneous and mistaken belief that the business operated by respondents is an agency or representative of, or in some manner connected with, the military forces or Government of the United States and into the purchase of substantial quantities of respondents' merchandise in commerce because of such erroneous and mistaken belief.

PAR. 4. In addition to the above practices, the respondents have made other false and misleading representations as to their business status in connection with the sale and offering for sale of their merchandise. Through the use of the word "manufacturers" on their letterheads and by other means, respondents represented that they own, operate, or control a factory or factories where their merchandise is manufactured and that they are the manufacturers of such merchandise. In truth and in fact, neither the corporate respondent nor any of the individual respondents owns, operates, or controls a factory wherein is manufactured any substantial portion of the merchandise offered for sale and sold by respondents. The respondents purchase all the merchandise offered for sale and sold from others.

PAR. 5. There is a preference on the part of a substantial portion of the purchasing public and other purchasers for dealing directly with the manufacturer of products, rather than with wholesalers, jobbers, or other dealers, such preference being due in part to a belief that by dealing with the manufacturer lower prices and other advantages may be obtained.

The use by the respondents of the word "manufacturers" on their letterheads and otherwise has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents are the manufacturers of their merchandise and own, operate, or control a plant or plants where such merchandise is manufactured and into the purchase of substantial quantities of respondents' merchandise in commerce because of such erroneous and mistaken belief.

Order

CONCLUSION

The acts and practices of the 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 on the complaint of the Commission, answer of the respondents, testimony, and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief filed in support of the complaint (the respondents not having filed brief or requested oral argument); 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 respondent, Federal Military Equipment Corp., a corporation, and its officers, and respondents, Harry Drath, Max Schwartz, and Al B. Wolf, individually and as officers and directors of respondent Federal Military Equipment Corp., and as copartners trading as Federal Military Equipment Co., or trading under any other name or names, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of military insignia, clothing, novelties, and other similar merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Federal Military Equipment" or words or terms of similar import or meaning as a corporate or trade name or as part of a corporate or trade name; or representing in any other manner that the respondents have any connection with the United States Government or any branch or agency thereof.

2. Using the word "manufacturers" or any other word of similar import or meaning on letterheads, stationery, or other advertising material; or representing in any other manner that the respondents manufacture the merchandise sold by them unless and until the respondents own and operate, or directly and absolutely control, the manufacturing plant or factory wherein said merchandise is manufactured.

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.

Complaint

43 F. T. C.

IN THE MATTER OF

CHARLES A. GEARING

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

Docket 5292. Complaint, Mar. 9, 1945—Decision, Mar. 26, 1947

Where an individual engaged in the interstate sale and distribution of religious flags and banners; in advertising in newspapers and periodicals, and through circulars—

- (a) Represented that his flags and banners were made of silk and that the fringes were gold; when in fact the flags and banners and the fringes also were composed of rayon; and
- (b) Represented that certain of the flags and banners were given free; when in order to obtain such so-called gifts the recipients were required to purchase other flags or banners, prices charged for which included the prices of the "free" products;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby induce the purchase by it of a substantial quantity of said products:

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. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Brust & Pakenham, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Charles A. Gearing, an individual hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Charles A. Gearing is an individual with his office and principal place of business located at 311 South Twenty-second Avenue, Bellwood, Ill.

PAR. 2. Respondent is now, and for more than 1 year last past, has been engaged in the sale and distribution of flags and banners. Respondent causes said products when sold to be transported from his place of business in the State of Illinois, or from the place of man-