

IN THE MATTER OF
WILLYS-OVERLAND MOTORS, INC. ET AL.

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

Docket 4959. Complaint, May 6, 1943—Decision, Feb. 27, 1948

The Jeep—name apparently applied for the first time to the vehicle so known, by some soldier or noncommissioned officer, while the earlier models were being tested by the Army, on the basis of the newspaper comic strip character—was not the product of any one manufacturer either acting alone or in collaboration with the Army, but represented, rather, the result of the combined efforts of the Army and the several manufacturers who participated in the project.

As respects the efforts which culminated in the Jeep, the famous vehicle known to engineers as the quarter-ton 4 x 4 (four-wheel drive) truck, great credit is due the Army for originating the product and for its tireless efforts toward developing and perfecting the vehicle, and credit is due, also, to different manufacturers for outstanding and substantial contributions in connection with assistance rendered by them in different stages of the project and with respect to various aspects connected with the successful completion thereof.

Where a corporation engaged in the manufacture of automotive vehicles and in the competitive interstate sale and distribution thereof, including the vehicle commonly known and referred to as the "Jeep"; its corporate advertising agency; and certain officers thereof; in numerous advertisements disseminated throughout the United States in magazines, newspapers, and other advertising media—

Represented, directly and by implication, that said manufacturer, in cooperation and collaboration with the quartermaster corps of the United States Army, created and designed the automotive vehicle commonly known as the "Jeep", and used by them for military purposes;

The facts being that the Jeep was not the product of any one manufacturer, either acting alone or in collaboration with the Army, and said manufacturer was not entitled, along with the Army, to the entire credit for said vehicle; and while it participated in and contributed to the developing and perfecting thereof, it did not participate in creating or designing it;

With tendency and capacity to enhance the prestige and promote good will for said manufacturer and its products, and thereby induce a substantial portion of the public to purchase said products in preference to those of its competitors; whereby substantial trade had been and was being diverted unfairly to it from them:

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

As respects respondent's contention, in said proceeding, that their advertisements did not relate to all models of the Jeep (i. e., the Bantam and Ford) but only to that produced by the corporation in question, as to which they urged that such corporation did, in collaboration with the Army, create, design, and perfect its own model, the advertisements were not so limited but referred to the Jeep generally. Furthermore, the public does not distinguish between the various models of the Jeep, as the record established, but thinks of it as the small, light-weight, quarter-ton, four-wheel drive, low silhouette, olive-drab vehicle used by the Army, without regard to differences in detail or the manufacturer who produced it—a fact not only established by the testimony of witnesses but apparent also from an examination of photographs of the various models introduced in evidence, which are so similar in general outline and external appearance that it is difficult, without close examination and comparison, to distinguish between them.

While the word "create," as regards respondents' contention that it does not necessarily connote originality or conception, and that in the modern sense it means merely to make, build, produce, or manufacture, is sometimes used in that sense, it is also used to denote originality, and an examination of respondents' advertisements leaves no doubt that they were intended to and did convey the latter meaning—that respondent manufacturer, in cooperation with the Army, conceived and originated the Jeep, and that the vehicle was the product of the inventive genius of said manufacturer and the Army.

As regards the fact that some of the tractors made by the intervenor, sold by it to the Army and Navy during the war, used primarily for moving heavy equipment and weighing about $6\frac{1}{2}$ tons as compared with the weight of about 1 ton of the Jeep, were referred to in the Army and elsewhere as "Jeeps": the Commission made no findings as to the relative rights of said intervenor and respondent manufacturer to apply the name to their respective products, said issue not having been raised in the Commission's complaint and being essentially a private controversy between the two parties.

In said proceeding in which the complaint charged respondents with also representing falsely or misleadingly that the Jeep made and sold by respondent manufacturer had "been used as a pattern for all command-reconnaissance cars of the type," and that respondents' regular passenger motorcars embodied the same qualities of durability and economy as said Jeeps: the Commission was of the opinion and found that such additional charges were not sustained by the record.

In said proceeding in which, in addition to respondent corporate manufacturer and respondent corporate advertising agency, there were joined certain individuals, officers of said corporations, the Commission was of the further opinion that the public interest did not require the retention in such proceeding of any of the individual respondents.

Before *Mr. J. Earl Cox*, trial examiner.

Mr. Allen C. Phelps and *Mr. Frank Hier* for the Commission.

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Davies, Richberg, Beebe, Busick & Richardson and *Alvord & Alvord*, of Washington, D. C., and *Ritter & Boesel*, of Toledo, Ohio, for respondents.

Mr. Samuel Herrick, of Washington, D. C., and *Faegre & Benson*, of Minneapolis, Minn., for Minneapolis-Moline Power Implement Co., intervenor.

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 Willys-Overland Motors, Inc., a corporation, United States Advertising Corp., a corporation, Ward M. Canaday, Joseph W. Frazer, George W. Ritter, Delmar G. Roos, and Frank H. Canaday, 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, Willys-Overland Motors, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business in Toledo, Ohio. It is now, and within 5 years last past has been, engaged in the manufacture and assembly of automobiles, including a motor vehicle commonly known and referred to as a "Jeep," and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. It now causes, and within 5 years last past has caused, such automotive products, when sold by it, to be transported from its place of business in the State of Ohio to the purchasers thereof, some being located in said State and others being located in various other States of the United States and in the District of Columbia, and there is now, and has been within 5 years last past, a constant current of trade and commerce conducted by said respondent, in such automotive products, between and among the various States of the United States and in the District of Columbia. Said respondent is now, and within the 5 years last past has been, in substantial competition in the conduct of its said business with other corporations and with individuals, firms, and partnerships engaged in the manufacture and sale of automotive products in interstate commerce.

The following-named individuals are officers of the said corporation who are responsible for or who have participated in the acts and

practices of said corporation hereinafter charged as being unlawful, and as such are designated as respondents herein: Ward M. Canaday, chairman of the board of directors; Joseph W. Frazer, president; George W. Ritter, vice president and secretary; Delmar G. Roos, vice president in charge of engineering, and Frank H. Canaday, director.

PAR. 2. Respondent, United States Advertising Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at Toledo, Ohio. The following-named individuals are officers of said corporation, who are responsible for or who have participated in the acts and practices of said corporation hereinafter charged as being unlawful, and as such are designated as respondents herein: Ward M. Canaday, chairman of the board of directors; George W. Ritter, vice president and director; and Frank H. Canaday, director.

Respondent, United States Advertising Corp., is engaged in the advertising business and in the promotion of the sale of various commodities through the medium of advertisements disseminated in newspapers, magazines, and other periodicals and over the means of radio.

Among other clients of said respondent, United States Advertising Corp., was and is respondent Willys-Overland Motors, Inc., and in the promotion of the business of its said client it has prepared and placed advertisements in various newspapers, magazines, and other periodicals and caused radio broadcasts to be made describing the automotive products of respondent Willys-Overland Motors, Inc.

PAR. 3. In the course and conduct of their businesses described in paragraphs 1 and 2 hereof and for the purpose of aiding and promoting the sale of the said motorcars of the respondent, Willys-Overland Motors, Inc., in commerce, as aforesaid, respondents have during the time hereinabove mentioned disseminated and caused to be disseminated by United States mails, in magazines of national circulation, in newspapers of interstate circulation, by radio broadcasts and by other means in commerce, advertisements and news articles in which they have represented, directly and by implication,

(a) That the respondent, Willys-Overland Motors, Inc., in cooperation and collaboration with the Quartermaster Corps of the United States Army, created and perfected the automobile or automotive vehicle now commonly known and referred to as a "Jeep," and currently used by the United States Army for reconnaissance and transportation purposes.

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(b) That the Willys-Overland Motors, Inc., was "The designer and manufacturer of the Jeep" a spectacular achievement.

(c) That the said Jeep so manufactured and sold by respondent Willys-Overland Motors, Inc., has "been used as a pattern for all command-reconnaissance cars of the type."

(d) That their regular passenger motorcars embody the same qualities of durability and economy as said Jeeps.

Among other advertisements and news items to the above effect are the following:

PICTURIZATION OF JEEP IN ACTION UNDER FIRE
(Color reproduction)

HOT FROM THE "LINES" AT WILLYS-OVERLAND . . .

HELL BENT FOR VICTORY

They're rolling off the teeming assembly lines at the Willys-Overland plants, in ever-increasing numbers—hell bent for Victory.

They're the motorized mustangs of our modern mobile army—Willys-built Jeeps.

Climbing stiff grades, crashing streams, mud and sand—hauling men, guns and other vital materials—the Jeeps are getting more power, more speed, more action and durability out of a ton of steel and a gallon of gasoline, than has ever been done before.

It was the great Willys civilian engineering staff fresh from their triumphs in the Willys-American and Go-Devil engine, who collaborated with the Quartermaster Corps of the U. S. Army to create and perfect the jubilant Jeep.

But, proud as we are of this fine achievement, we are still a motorcar concern—dedicated to the building of low-cost, dependable transportation for "the people" as thousands of thankful Willys car owners are realizing at this moment.

* * *

This is an all-out war * * *

PICTURIZATION OF
JEEP
(OUTLINE DRAWING)

Motor Cars

WILLYS

Trucks and Jeeps

PICTURIZATION OF
FOUR-DOOR SEDAN
(OUTLINE DRAWING)

U. S. Army Jeep

Picturization of motor
(Photo halftone)

Americar
The People's Car

THE GO-DEVIL ENGINE—power-heart of WILLYS CARS
and all JEEPS

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PICTURIZATION OF JEEP

(Photo halftone)

Ford, Willys Agree to Manufacture Jeeps

News Item re agreement by
Ford and Willys-Overland
to manufacture jeeps

THE JEEP IN CIVVIES

We are proud beyond words of the Willys Engineering and Manufacturing Staffs. In close collaboration with the Quartermaster Corps of the United States Army, they created and perfected the rugged, dependable "Jeep" that is being used as the pattern for all command-reconnaissance cars of this type.

In civilian service, the new 1942 Willys Americar, "the Jeep in Civvies," is equally outstanding. Designed by the same engineers, built by the same trained hands, powered by the same fuel-saving Go-Devil engine as the rugged "Jeeps," it provides dependable

transportation at the lowest cost of any full-family size car in the world.

Willys-Overland Motors, Inc.,
Toledo, Ohio
The New 1942

WILLYS

Americar The People's Car

Save Gas
For Uncle Sam
Drive a fuel-saving
WILLYS Americar

Look Ahead!
Buy WILLYS

PICTURIZATION OF FOUR-DOOR WILLYS SEDAN

(Photo halftone)

Some of these practical adaptations are shown in the drawings below, which were prepared by the Willys-Overland Company, the designer and manufacturer of the jeep.

DRAWING OF JEEPS IN SNOW

DRAWING OF JEEP OPERATING
COMPRESSOR TO INFLATE
TIRES

DRAWING OF JEEPS PULLING PLOW AND HARROW

PHOTOGRAPH OF JEEP LAYING
SMOKESCREEN IN TROPICAL
FOREST

PHOTOGRAPH OF JEEP IN USE
AS TELEPHONE CAR IN PINE
FOREST

PICTURIZATION OF JEEP IN ACTION UNDER FIRE

(Color reproduction)

LIKE A BAT OUT OF HELL!

The Jeep from Willys-Overland

Through clouds of flying sand and gravel it is roaring across the panorama of today's war, "like a bat out of hell"—the JEEP from Willys-Overland.

Tough soldiers idolize this modern mustang of metal—which gives them power, speed, action, reliability—and a seemingly bottomless gas tank.

And we are proud of Willys-Overland civilian engineers, who collaborated with experts of the U. S. Quartermaster Corps to produce the Jeep.

These are the same fine engineers who created the Willys Go-Devil Engine and the Willys Americar—the war-time engineering aces of whom it is now said—"they get more power, speed, action and durability out of a ton of steel and a gallon of gas than has ever been done before."

Here again, and most strikingly, the fundamental soundness and versatility

of Willys engineering and manufacturing is proved in the most relentless testing laboratory of all—the laboratory of war.

Passenger cars and light trucks are shelved until the war shall have been won. But Willys reputation is being maintained and etched on millions of minds by the fighting Jeeps as they do their stuff in our training camps and on far-off battlefields.

Willys-Overland Motors, Inc.,
Toledo, Ohio

*	*	*	*	*
*	*	*	*	*
*	*	*	*	*

TOMORROW, after the war is won, make your first new car a Willys, "the Jeep in Civvies."

PICTURIZATION OF JEEP
(OUTLINE DRAWING)

W I L L Y S

PICTURIZATION OF FOUR-
DOOR SEDAN (OUTLINE
DRAWING)

Motor Cars

Trucks and Jeeps

(Picturization of Motor—Halftone Print)

U. S. Army Jeep

Americar the People's Car

THE GO-DEVIL ENGINE—power-heart of Willys Cars and Jeeps

PAR. 4. In truth and in fact:

(1) The respondent, Willys-Overland Motors, Inc., did not create and perfect the "Jeep", in cooperation and collaboration with the said Quartermaster Corps of the United States Army, or otherwise.

(2) It was not the designer of or the sole manufacturer of the "Jeep".

(3) The "Jeep" manufactured by respondent, Willys-Overland Motors, Inc., has not been used as a pattern for all command-reconnaissance cars of the type.

(4) The regular passenger cars of respondent Willys-Overland Motors, Inc., do not embody the same qualities of durability and economy as are embodied in the said "Jeep."

In truth and in fact, the idea of creating the Jeep was originated by the American Bantam Car Co. of Butler, Pa., in collaboration with certain officers of the United States Army, and the same was developed by the American Bantam Car Co. in collaboration with said officers, and not by the respondent, Willys-Overland Motors, Inc.

PAR. 5. The representations of said respondents as set-out in paragraph 3 hereof, have the capacity and tendency of deceiving and misleading the purchasing public into the erroneous belief that such representations are true, and thereby the purchasing public is induced and will be induced to purchase the automotive products of respondent Willys-Overland Motors, Inc., in preference to and instead of those of other manufacturers of and dealers in like products. Thereby substantial injury has been done and is being done by respondents to competition in interstate commerce.

PAR. 6. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 6, 1943, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. Answer was filed by the respondents to the complaint. Subsequently, the Minneapolis-Moline Power Implement Co., a corporation, upon petition filed by it, was permitted by the Commission to intervene in the proceeding. Hearings were then held before a trial examiner of the Commission theretofore duly designated by it, at which hearings testimony and other evidence in support of and in opposition to the complaint were introduced and this testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by the Commission upon the complaint, answer, petition of the intervenor, testimony, and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission, having duly considered the matter and being now fully advised

in the premises, find 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, Willys-Overland Motors, Inc. (hereinafter frequently referred to as Willys-Overland), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located in Toledo, Ohio. It is now, and for many years last past has been, engaged in the manufacture, sale, and distribution of automotive vehicles, including a vehicle commonly known and referred to as the "Jeep."

It causes and has caused its products, when sold, to be transported from its place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. It maintains and has maintained a course of trade in its product in commerce between and among the various States of the United States and in the District of Columbia.

In the sale and distribution of its products, respondent, Willys-Overland, is and has been in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the manufacture of automotive vehicles and in the sale and distribution of such vehicles in commerce between and among the various States of the United States and in the District of Columbia.

Respondents, Ward M. Canaday, Joseph W. Frazer, George W. Ritter, Delmar G. Roos, and Frank H. Canaday, are individuals who are or have been officers of Willys-Overland and who participated in or were responsible for the acts and practices of the corporation hereinafter set forth. The specific offices held by these individuals are as follows: Ward M. Canaday, chairman of the board of directors; Joseph W. Frazer, president (Frazer resigned his office on September 30, 1943, and was succeeded by respondent, Ward M. Canaday, on January 1, 1944); George W. Ritter, vice president and secretary; Delmar G. Roos, vice president in charge of engineering; Frank H. Canaday, director.

PAR. 2. Respondent, United States Advertising Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located in Toledo, Ohio. Prior to January 1, 1944, this corporation was actively engaged in the advertising business and in the promotion of the sale of various commodities through the medium

of advertisements disseminated by means of newspapers, magazines, and other advertising media. On January 1, 1944, the business of the corporation was transferred to a partnership doing business under the name of United States Advertising Co. of Illinois.

Among the clients of respondent, United States Advertising Corp., was respondent, Willys-Overland, and in the promotion of the business of Willys-Overland respondent, United States Advertising Corp., prepared advertisements of Willys-Overland's products and placed them in various newspapers, magazines, and other periodicals.

Respondents, Ward M. Canaday, George W. Ritter, and Frank H. Canaday, were officers of respondent, United States Advertising Corp., and participated in or were responsible for the acts and practices of the corporation hereinafter set forth. The specific offices held by these individuals were as follows: Ward M. Canaday, chairman of the board of directors; George W. Ritter, vice president and director; Frank H. Canaday, director.

PAR. 3. The intervenor, Minneapolis-Moline Power Implement Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in Minneapolis, Minn. It is now, and for many years last past has been, engaged in the manufacture of farm machinery, farm implements, tractors, motors, and motor vehicles, and in the sale and distribution of such products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business, and for the purpose of enhancing the prestige of and building good will for Willys-Overland and its products and thereby promoting the sale of such products, the respondents have disseminated and caused to be disseminated numerous advertisements, such advertisements being disseminated among the general public throughout the United States by means of magazines, newspapers, and other advertising media. Among and typical of such advertisements were the following:

THE JEEP CALLS THEM DADDY * * * *

The Quartermaster Corps of the U. S. Army and the Civilian Engineers of
Willys-Overland

We pay public tribute here, to the Engineers of Willys—the most highly lauded automotive engineering staff that the pressure and inspiration of war have brought to light.

These are the men whose engineering skill and creative minds, added to those of the Quartermaster Corps of the U. S. Army, gave birth to the amazing Jeep of today. No other single mobile unit is so typical of modern mechanized war.

And it *proves*, beyond question, that the Willys Go-Devil *Engine* and the de-

fense-time Willys *Americar* were no "doorstep" babies, but legitimate offspring of fine engineering practice that is both fundamentally sound and reliable.

TODAY do your part. Conserve rubber and other materials vital to war equipment. Buy defense stamps and bonds. Pay taxes with a smile. Whatever the total price you pay, it will be as nothing compared to the value of continued Freedom * * * TOMORROW, make your first new post-war car a Willys—"The Jeep in Civvies" (Comm. Ex. No. 3).

Hot From The "Lines" At Willys-Overland

HELL BENT FOR VICTORY

They're rolling off the teeming assembly lines at the Willys-Overland plants, in ever-increasing numbers—hell bent for Victory. "They" are the motorized mustangs of our modern mobile army—Willys-built Jeeps.

Climbing stiff grades, crashing streams, mud, and sand—hauling men, guns, and other vital materials—the Jeeps are getting more power, more speed, more action and durability out of a ton of steel and a gallon of gasoline than has ever been done before.

It was the great Willys civilian engineering staff fresh from their triumphs in the Willys-Americar and Go-Devil engine, who collaborated with the Quartermaster Corps of the U. S. Army to create and perfect the jubilant Jeep.

But, proud as we are of this fine achievement, we are still a motor car concern—dedicated to the building of low-cost, dependable transportation for "the people" as thousands of thankful Willys car owners are realizing at this moment * * * (Comm. Ex. No. 4).

THE SUN NEVER SETS ON THE FIGHTING JEEP

In the bright, blistering heat of Egypt, as in the humid swamps of Burma; through Russia's clinging springtime mud as through the frigid cold of its winter front * * * the Jeep does a fighting man's job—a typical American job.

Streaking over fiery sands on hazardous scouting trips * * * stabbing Axis tanks, like flaming hornets, in fierce desert fights * * * carrying officers, munitions, and supplies through suffocating sand storms * * * the Jeep keeps going, day upon day.

Yes, in Egypt the tough, swift, elusive, and irrepressible Jeep has won all hearts, as it has on every flaming front of this war. Nothing daunts the Jeep. No climate, no terrain, no job, is too tough. It sets an example of all-out uncompromising, do-or-die service to the "cause" that every fighting man, worker and civilian in America must equal if we are to win this war.

We are proud of the Willys-Overland engineers who assisted the U. S. Quartermaster Corps in designing the Jeep. It is to *their* credit that the Willys designed "Go-Devil" Engine drives *all* Jeeps being built for the U. S. Army and our Allies. Willys-Overland Motors, Inc. (Comm. Ex. No. 7).

"THE JEEP IN CIVVIES"

We are proud beyond words of the Willys Engineering and Manufacturing Staffs. In close collaboration with the Quartermaster Corps of the United States Army, they created and perfected the rugged, dependable "Jeep" that is being used as the *pattern* for all command-reconnaissance cars of this type.

In civilian service, the new 1942 Willys Americar, "the Jeep in Civvies," is equally outstanding. Designed by the same engineers, built by the same trained hands, powered by the same fuel-saving Go-Devil engine as the rugged "Jeeps," it provides dependable transportation at the lowest cost of any full-family-size car in the world * * * (Comm. Ex. No. 1).

PAR. 5. Through the use of these advertisements and others of similar import, the respondents have represented, directly and by implication, that respondent Willys-Overland, in cooperation and collaboration with the Quartermaster Corps of the United States Army, created and designed the automotive vehicle commonly known and referred to as the "Jeep" and used by the United States Army for various military purposes.

PAR. 6. For a number of years prior to the development of the vehicle here under consideration the matter of developing a powerful but small and lightweight vehicle for reconnaissance and transportation purposes had engaged the attention of the United States Army. Efforts had been made to develop such a vehicle and experiments had been conducted with certain commercial motor vehicles with the view of adapting them to the Army's needs but nothing of a definite or tangible nature had resulted. At that time the lightest vehicle in use by the Army (except motorcycles and motorcycles with side cars) was a half-ton truck. What the Army wanted was a lighter vehicle, with great power and durability, a vehicle which could operate at reasonable speed over all kinds of terrain and which could be manhandled in the event of accident.

PAR. 7. It was not until May and June 1940 that definite steps were taken toward the accomplishment of the Army's objective. In May, while the matter was under consideration by the Army and particularly by the Office of the Chief of Infantry and the Office of the Chief of Cavalry, one Charles H. Payne, representing the American Bantam Car Co. (hereinafter sometimes referred to as the Bantam Co. and as Bantam) called at the Office of the Chief of Infantry and consulted with certain officers relative to the developing of a vehicle which would meet the Army's needs. The regular commercial product of the Bantam Co. was a small, lightweight car known as the Bantam (formerly called the Austin), and Payne's idea apparently was to use this car or its chassis as a basis for a new vehicle which would be satisfactory to the Army. The Chief of Cavalry testified that, pursuant to conferences with the Chief of Infantry, Mr. Payne, and technical advisers concerning the technical characteristics, there was at this time a meeting of the minds as to the main features of the car.

PAR. 8. On June 6, 1940, following these conferences with Payne, the Office of the Chief of Infantry addressed a letter to the Adjutant General, through the Office of the Chief of Cavalry, setting out certain characteristics which it was felt the vehicle should possess and recommending that a designated number of vehicles conforming generally to these characteristics be procured for testing purposes. This recommendation was concurred in by the Office of the Chief of Cavalry and the Office of the Quartermaster General, both of which, along with the Infantry, had been studying the project, and the recommendation was approved by the General Staff. By order of the General Staff the project was referred to the Ordnance Technical Committee, which was composed of representatives of Ordnance and of the Infantry, Cavalry, Field Artillery and Quartermaster Corps (later, after the organization of the Armored Corps, representatives of that corps were added) and this committee recommended that a subcommittee visit the Bantam Co., which was located at Butler, Pa., "for conferences with the officials and engineers of that company in regard to the military characteristics and design of the light command and reconnaissance car * * *."

PAR. 9. This recommendation was approved and on June 19, 1940, the subcommittee visited the Bantam Co. plant and conferred with the company's officials and engineer. These conferences extended over some 2 days. There was a general discussion of the design and desired characteristics of the proposed new vehicle and a tentative sketch of the vehicle was made. The company's engineering data and blueprints relating to its regular commercial car were examined and certain brief tests of this car were made. Engineering and plant facilities of the company were checked. An engineer of the Spicer Manufacturing Co., of Toledo, Ohio, automobile-axle manufacturers, was called in to discuss the adapting of the four-wheel drive to the new vehicle. The Bantam car, as practically all commercial passenger automobiles, had only a two-wheel drive. The conferees used the Bantam car as a basis from which to work.

PAR. 10. Shortly after these conferences in Butler, the subcommittee, on June 22, 1940, addressed a memorandum to the Ordnance Technical Committee setting forth certain general features and characteristics of the proposed new vehicle and recommending that 70 vehicles of the type described be approved for testing purposes. This recommendation was approved and on July 11, 1940, invitations to bid on 70 "light reconnaissance and command" cars or trucks were issued by the Quartermaster Corps (the procuring of the vehicle having been transferred to that branch of the Army). In the meantime, numerous conferences

among themselves had been held by the Army officers working on the project and several conferences or discussions had also been held between the officers and officials of the Bantam Co. These invitations to bid, which were sent to some 135 automobile manufacturers throughout the United States, including Bantam and Willys-Overland, were accompanied by a statement of specifications and an outline drawing. These specifications were for the most part general in their nature, consisting largely of certain performance requirements and limiting measurements. Likewise, the drawing was in broad outline only. Neither the specifications nor the drawing undertook to set forth details of design and construction. These had to be worked out by the bidders.

PAR. 11. The bids were opened on July 22, 1940. Only two bids were received, one being from Bantam and the other from Willys-Overland. Willys-Overland's bid was the lower in amount, but the company doubted that a pilot (test) model could be manufactured and delivered within the time specified by the invitation to bid, and it therefore took exception to this time limit. As a result, the contract for the 70 vehicles was awarded to the Bantam Co.

PAR. 12. Upon receiving the award of the contract, Bantam proceeded at once with the building of its pilot model and this model was delivered to the Quartermaster Corps at Camp Holabird, Md., on September 23, 1940. There then followed a series of tests of the model and the results were favorable. Officials of Willys-Overland were at Camp Holabird in October of 1940 and observed the tests of the Bantam model and the design of the car. This was prior to the submission of the Willys-Overland pilot model to the Army. By December 17, 1940, the remaining 69 vehicles due under the contract had been delivered by Bantam and these were distributed among a number of Army camps for inspection and testing. As in the case of the pilot model, the results of the tests were regarded as favorable.

PAR. 13. A few days after the bids were opened on July 22, 1940, and the contract awarded to Bantam, officials of Willys-Overland contacted officers of the Quartermaster Corps at Camp Holabird and it was suggested by the officers that if the company was still interested in the project it build a pilot model at its own expense, using the specifications and drawing which accompanied the Army's July 11 invitation to bid. Later the officers suggested to the Ford Motor Co. (hereinafter sometimes referred to as Ford), that it also build a pilot model at its own expense, using the same specifications and drawing. Both Willys-Overland and Ford proceeded to build pilot models, the Willys-Over-

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land model being delivered to the Quartermaster Corps at Camp Holabird on November 13, 1940, and the Ford model on November 23, 1940. The Army was desirous of obtaining as many engineering suggestions and pilot models as possible, its idea being that the more it received the better would be its chances of working out a vehicle which would meet its needs.

PAR. 14. By October 1940, tests of the Bantam model had proceeded sufficiently far to indicate the suitability of a vehicle of this general type for military use and the Army felt that a much larger number than the 70 then on order would be needed. In other words, by October 1940, based on the favorable tests of the Bantam the general characteristics of the vehicle had been formulated and the creative stages had been substantially completed. Subsequent thereto the vehicle was developed and perfected. As of that date Willys-Overland had not submitted a pilot model to the Army. In October of 1940 the Adjutant General by order of the Secretary of War directed that 1,500 additional cars be purchased from Bantam. Willys-Overland protested against this award. The authorities subsequently decided not to purchase the additional vehicles solely from Bantam for the reason that this important new unit should be purchased from two or three sources of supply so that the combined facilities of such companies would be available in the event of a major emergency. It was finally decided to order, by negotiated contract, 1,500 from each of Bantam, Ford, and Willys-Overland, the contract to be contingent in each case upon the building by the company and the acceptance by the Army of a satisfactory pilot model. The original pilot model submitted by Willys-Overland was recommended for rejection by the Ordnance Technical Committee because of overweight. Subsequently a contract for 1,500 vehicles was awarded to Willys-Overland. In the meantime, the Army had determined, as a result of its tests and further study of the matter, upon certain changes in the specifications and requirements and these changes were incorporated into the new contracts. The contracts were subsequently extended to call for a total of 7,842 vehicles, of which Bantam produced and delivered 2,642, Ford 3,700, and Willys-Overland 1,500.

PAR. 15. The three types of vehicle produced by the three manufacturers all conformed generally to the Army's over-all specifications and requirements but the three types differed materially in detail. In June, July, and August 1941, the three models were subjected by the Army to extensive comparative tests. The over-all performance of each of the models was good. Each was found to be superior to

the others in certain respects and inferior in other respects. The superiority of the Willys-Overland model was chiefly in its more powerful engine, the Bantam in its lower fuel consumption and ability to stop within shorter distances, the Ford in its arrangement of gear shift and hand-brake levers and greater driver comfort and leg room.

PAR. 16. By July 12, 1941, the Army had decided to procure 16,000 more of these vehicles and on that date called for bids on that number on an all-or-none basis. The purpose of the Army was to standardize on one model and have one manufacturer produce all of the vehicles according to this one model so that there would be complete interchangeability of parts. As a result of the recent tests, the Army had made further revisions in its specifications and drawings and these revised specifications and drawings accompanied the invitation to bid. Bids were submitted by Bantam, Ford, and Willys-Overland and also by the Checker Cab Co., but the bid of the Checker Cab Co. was rejected because no pilot model had been submitted. Of the remaining three bids, Willys-Overland was low and was awarded the contract. Following the award there were conferences between the Army engineers and Willys-Overland and further changes were made in the vehicle.

PAR. 17. In October 1941, the Army concluded that as a precautionary measure it was desirable that there be a second source of supply for this "standardized" vehicle. Willys-Overland agreed to turn over to any other manufacturer designated by the Army copies of all of its blueprints and other data concerning the vehicle, and the Army worked out an arrangement with the Ford Motor Co. whereby it also would produce the vehicle. While there were certain minor differences between the vehicles produced by the two companies, essentially they were the same and there was complete interchangeability of parts. Large quantities of the vehicle were purchased by the Army from both manufacturers. As of November 30, 1944, Willys-Overland had delivered 282,420 vehicles and Ford 237,163. And purchases continued after that date. During the course of production many further changes in the vehicle were made. Sometimes these changes would be suggested by the Army, sometimes by Willys-Overland, and sometimes by Ford.

PAR. 18. It is impossible to state with certainty just when the name "Jeep" was first applied to this now famous vehicle, known to engineers as the $\frac{1}{4}$ -ton 4 x 4 (four-wheel drive) truck. The name appears to have been applied to the vehicle for the first time by some soldier or noncommissioned officer while the earlier models were being tested by

the Army, and appears to have been taken from a newspaper comic strip which included a character known as the "Jeep." In any event, the name caught on rapidly and soon was very widely used to designate the vehicle.

PAR. 19. It is evident from the facts herein set forth that the Jeep was not the product of any one manufacturer, either acting alone or in collaboration with the Army. Rather, the Jeep represented the result of the combined efforts of the Army and the several manufacturers who participated in the project. Great credit is due the Army for originating the project and for its tireless efforts toward developing and perfecting the vehicle. Bantam contributed greatly by its assistance during the early stages of the project and by supplying the first pilot model. Willys-Overland made an outstanding contribution in its powerful engine, as well as in other features of the vehicle. Ford also made valuable contributions to the vehicle. The Spicer Manufacturing Co. is likewise deserving of credit for working out the Jeep's four-wheel drive.

PAR. 20. Respondents' advertisements were erroneous and misleading in that they attributed to Willys-Overland, along with the Army, the entire credit for the Jeep. As shown above, Willys-Overland did not participate in the creating or designing of the Jeep, although it did participate in and contribute to the developing and perfecting of the vehicle.

PAR. 21. Respondents urge that their advertisements did not relate to all models of the Jeep (the Bantam and Ford models) but only to the model produced by Willys-Overland, their contention being that Willys-Overland did, in collaboration with the Army, create, design, and perfect its own model. The advertisements, however, were not so limited but referred to the Jeep generally. Moreover, the record establishes that the public does not distinguish between the various models of the Jeep. To the public the Jeep is the small, lightweight, quarter-ton, four-wheel drive, low silhouette, olive drab vehicle used by the Army, without regard to differences in detail or the manufacturer who produced it. Not only is this established by the testimony of witnesses, but it is apparent also from an examination of photographs of the various models introduced in evidence. The models are so similar in general outline and external appearance that it is difficult, without close examination and comparison, to distinguish between them.

PAR. 22. It is also urged by respondents that the word "create" does not necessarily connote originality or conception, that in the modern sense the word means merely to make, build, produce, or manufacture.

While the word is sometimes used in that sense, it is also used to denote originality. An examination of respondents' advertisements leaves no doubt that they were intended to and did convey the latter meaning—that Willys-Overland, in cooperation with the Army, conceived and originated the Jeep, that the vehicle was the product of the inventive genius of Willys-Overland and the Army.

PAR. 23. Among the products of the intervenor, Minneapolis-Moline Power Implement Co., is a large tractor, known in the Army as a prime mover. Some 1,018 of these vehicles were sold by the intervenor to the Army and Navy during the late war and were used primarily for moving heavy artillery and other heavy equipment. The vehicle weighs approximately $6\frac{1}{2}$ tons (the Jeep weighs approximately 1 ton). Some of these tractors were referred to in the Army and elsewhere as "Jeeps." The Commission, however, makes no findings as to the relative rights of the intervenor and Willys-Overland to apply the name of their respective products, this issue not being raised in the Commission's complaint and being essentially a private controversy between the two companies.

PAR. 24. While certain charges in addition to those herein discussed were made against respondents in the complaint, the Commission is of the opinion and finds that such additional charges are not sustained by the record.

PAR. 25. The Commission is of the further opinion that the public interest does not require the retention in this proceeding of any of the individual respondents.

PAR. 26. The use by respondents, Willys-Overland Motors, Inc., and United States Advertising Corp., of the erroneous and misleading representations herein set forth had and has the tendency and capacity to enhance the prestige of and promote good will for respondent, Willys-Overland, and its products, and thereby to induce a substantial portion of the public to purchase the products of Willys-Overland in preference to those of its competitors. In consequence thereof, substantial trade has been and is being diverted unfairly to Willys-Overland from its competitors.

CONCLUSION

The acts and practices of said respondents as herein found are all to the prejudice and injury of the public and of the competitors of respondent Willys-Overland, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, petition of the intervenor, testimony, and other evidence, report of the trial examiner upon the evidence, and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that certain of the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondents, Willys-Overland Motors, Inc., a corporation, and United States Advertising Corp., a corporation, and their officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of automotive vehicles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication, that respondent, Willys-Overland Motors, Inc., either acting alone or in cooperation or collaboration with the United States Army or with any other agency or party, created or designed the automotive vehicle known as the Jeep: *Provided, however*, That this order shall not prohibit respondents from representing that said respondent participated in and contributed to the development and perfecting of said vehicle.

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

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondents Ward M. Canaday, Joseph W. Frazer, George W. Ritter, Delmar G. Roos, and Frank H. Canaday.

Syllabus

IN THE MATTER OF

LEWMAN A. LANE, TRADING AS D. J. LANE CO. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5252. Complaint, Nov. 24, 1944—Decision, Feb. 27, 1948*

Where an individual engaged in the interstate sale and distribution of certain medicinal preparations which were intended for use in the treatment of asthma and hay fever and were designated as "D. J. Lane's Treatment," "D. J. Special Elixir," "Special Tablets," and "Nasal Ointment"; and his advertising agent; in advertisements of said "Treatment," in newspapers and other periodicals, chiefly, and in form letters sent to those replying—

- (a) Falsely represented that their said "Treatment" constituted a remedy for asthma and hay fever, that the "Treatment" and the "Tablets" which they sent to the prospective purchaser replying to the contact advertisement, constituted a cure or remedy for so-called "uncomplicated" asthma, and that those having "symptoms of bronchial or wet asthma" should take their "Special Elixir" at the same time they took the "Treatment" for the "paroxysms of asthma";
- (b) Falsely represented further in the aforesaid and other follow-up form letters sent to prospective purchasers that use of the "Treatment" or the "Elixir," as aforesaid, or both, as the case might be, constituted an effective remedy for different forms of asthma and that the purchasers could readily distinguish between the symptoms "of plain or dry asthma, requiring the "Treatment," and symptoms of the "bronchitis or wet asthma" requiring the "Elixir";

The facts being there are no such expressions known to the medical profession as "dry" asthma or "wet" asthma; determination of the cause of an asthmatic condition requires a thorough physical examination by a qualified physician, and the layman is unable with the information set out in the advertising material concerned to distinguish between one asthmatic condition and another or to determine which of said preparations may be indicated; the primary, if not the only therapeutic value of either the "Treatment" or "Elixir" was due to the potassium iodide ingredient which gave the user temporary relief; and, with that exception, preparations in question were not an effective treatment for asthma, and would also neither cure hay fever nor alleviate its symptoms;

- (c) Falsely represented that asthma is a derangement of the nervous system which affects the bronchial tubes; and
- (d) Falsely represented that his said preparations were in all cases safe or harmless;

The facts being that the "Tablets" and "Ointment" each contained ephedrine, which, in overdoses, produces toxic symptoms, must be prescribed with caution in certain cases and conditions, and in others not given at all;