

IN THE MATTER OF
THE ARMY AND NAVY PUBLISHING COMPANY, ETC.,
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 5475. Complaint, Dec. 19, 1946—Decision, Feb. 17, 1950

In considering the possibility of avoiding the absolute prohibition of such a trade name as "Army and Navy Photographic Bureau" to describe a business involving the private sale of photographs of men in military units, by requiring the use, in immediate connection therewith, of some qualifying or explanatory statement to the effect that the business involved was in fact that of a private concern, the Commission was of the view that said name was false *per se*, and that, such being the case, any additional words used in connection therewith would serve only to contradict the name rather than qualify it.

As respects the trade name "Army and Navy Publishing Company" and the question as to whether or not its absolute prohibition might not be avoided by requiring the use in immediate connection therewith of some qualifying or explanatory statement to the effect that the business involved was in fact a private business, the Commission was of the opinion that the representations implied therein were in part substantially true under the facts in the instant case, and that said trade name was not false *per se*, and that its misleading effect could be avoided by the use, in connection therewith, of an explanatory statement making it clear that the business was in fact a private one.

Where three partners engaged in the publication and interstate sale and distribution of books similar to college annuals, which contained reading matter of a descriptive and historical nature with respect to military units in the United States Armed Forces, including photographs of the personnel, and were prepared and published with the express permission and, to a substantial extent, with the cooperation and under the supervision of the military units involved, and were sold only to the men in the service—to whom the matter was usually presented in group meetings—and by mail to their families—

- (a) Represented or implied through the use of the words "Army and Navy" in their trade name "Army and Navy Publishing Company" that their business was a part of or was connected with the Army and Navy, and that their said publications were produced by or under the auspices of the Army or Navy; when in fact said business was a private concern; and

Where the aforesaid individuals and two others, engaged in the sale to the men and their families of enlargements of photographs made incident to the aforesaid publications—

- (b) Falsely represented and implied through the use of the trade name "Army and Navy Photographic Bureau," in connection therewith, that their business was a part of or connected with the United States Army and Navy, and that their photographs were produced by or under the auspices of the services;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their identity and business status, and the origin and nature of their products, and thereby cause it to purchase substantial quantities 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.

As respects the trade name "Army and Navy Photographic Bureau" in the instant case, the Commission was of the opinion that said name was false *per se* and should be discontinued entirely, not only because the word "bureau" represented or implied that the business was a part of the Federal Government, but also because the words "Army and Navy" falsely represented that the business was a part of or connected therewith, and that the photographs were sold by or under Army or Navy auspices, and that the representation was not justified by the fact that the photographs were originally made with the consent and assistance of the military units nor by the fact that they were pictures of men in the Army and Navy.

As respects the additional charge in the complaint against certain of the respondents, that they had represented their business as a corporation: the Commission was of the opinion and found that said charge was not sustained by the evidence.

Before *Mr. William L. Pack*, trial examiner.

Mr. Morton Nesmith for the Commission.

Breazeale, Sachse & Wilson, of Baton Rouge, La., and *Cleary, Gottlieb, Friendly & Cox*, of Washington, D. C., for respondents.

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 Herbert S. Benjamin, William Andrew Benson, Porter Earl Dozier, Joan Clem Goldberger, H. S. Benjamin, Jr., and Florence Riddle Benson, copartners, doing business as the Army and Navy Publishing Co., and the Army and Navy Publishing Co., Inc., and Herbert S. Benjamin, Joan Clem Goldberger, H. S. Benjamin, Jr., Dorothy Dennis, and Ann Shendle, copartners, doing business as the Army and Navy Photographic Bureau, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Herbert S. Benjamin, William Andrew Benson, Porter Earl Dozier, Joan Clem Goldberger, Herbert S. Benjamin, Jr., and Florence Riddle Benson are copartners doing business as Army and Navy Publishing Co. or as Army and Navy Publishing Co., Inc., with their principal place of business in the city of Baton Rouge,

State of Louisiana. Said respondents are now, and for more than 2 years last past have been engaged in the sale and distribution in commerce between and among various States of the United States of various publications, including military histories, pictorial reviews and service publications. Respondents cause and have caused such publications, when sold, to be shipped from their place of business in the State of Louisiana to purchasers in States other than the State of Louisiana, and in the District of Columbia.

Herbert S. Benjamin, Joan Clem Goldberger, H. S. Benjamin, Jr., Dorothy Dennis, and Ann Shendle are copartners, doing business as Army and Navy Photographic Bureau, with their principal place of business in the city of Baton Rouge, La. Said respondents are now, and for more than 2 years last past, have been engaged in the sale and distribution in commerce between and among the various States of the United States, of various publications, including military histories, pictorial reviews, service publications, and portraits, causing such publications and portraits when sold to be shipped from their place of business in the State of Louisiana, to purchasers in various States of the United States other than the State of Louisiana, and in the District of Columbia.

All of the aforementioned respondents maintain, and at all times mentioned herein have maintained, a course of trade in their products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, and for the purpose of promoting the sale and distribution of their publications in commerce, respondents Herbert S. Benjamin, William Andrew Benson, Porter Earl Dozier, Joan Clem Goldberger, H. S. Benjamin, Jr., and Florence Riddle Benson, doing business as copartners as aforesaid, have adopted and used the names "Army and Navy Publishing Co.," "Army and Navy Publishing Co., Inc.," as trade names under which to conduct their business of selling their said publications and other products, in commerce, and have used said trade names on stationery, letterheads, and invoices disseminated by them.

Respondents Herbert S. Benjamin, Joan Clem Goldberger, H. S. Benjamin, Jr., Dorothy Dennis, and Ann Shendle, doing business as copartners as aforesaid, have used the name "Army and Navy Photographic Bureau" as a trade name under which to conduct their business of selling various publications, portraits, and other products in commerce, and likewise have used such name on stationery, letterheads, and invoices disseminated by them.

PAR. 3. By the use of the aforesaid trade names, Army and Navy Publishing Co., Army and Navy Publishing Co., Inc., and Army and Navy Photographic Bureau, as hereinabove set forth, the respondents have represented, directly and indirectly, to purchasers and prospective purchasers of their respective products that their businesses are conducted by or under the direction of the War or Navy Department of the United States Government; that their publications and other products are official United States Government publications or products published or produced under the auspices of the said United States Government.

Through the use of said trade names, respondents further represent and have represented, directly or indirectly, that they are representatives of the Army and Navy Departments of the United States Government, that the merchandise advertised and sold by them consists wholly or principally of merchandise made or obtained for Army and Navy use, and respondents Herbert S. Benjamin, Joan Clem Goldberger, H. S. Benjamin, Jr., Dorothy Dennis, and Ann Shendle have represented that the Army and Navy Publishing Co., Inc., is a corporation.

PAR. 4. In truth, and in fact, respondents' respective businesses are conducted for a profit and are not conducted by or for the Department of War or the Department of the Navy of the United States Government, and none of respondents' business activities are conducted under the direction or supervision of the United States Government or any department thereof. Said respondents are not representatives of the Departments of War and Navy of the United States Government, and have no affiliation, connection, or association with said departments, and the merchandise advertised and sold by respondents does not consist wholly or principally of merchandise made or obtained for Army and Navy use. Further, in truth and in fact, the said Army and Navy Publishing Co., Inc., is not a corporation, but a trade name employed by the first-named group of respondents herein.

PAR. 5. The use by respondents of the aforesaid acts and practices in connection with the sale and the offering for sale of their said publications and other products in commerce as described herein, has had and now has, a tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the beliefs that the above-described representations are true. As a result of such erroneous and mistaken beliefs, engendered as herein set forth, the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondents' publications and other products.

PAR. 6. 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 19, 1946, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of the respondents' answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore designated by it, and such 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 the complaint, the respondents' answer thereto, the testimony and other evidence, the trial examiner's recommended decision (exceptions to which were filed by counsel in support of the complaint, but subsequently withdrawn), and briefs of counsel (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Herbert S. Benjamin, Joan Clem Goldberger, and Herbert S. Benjamin, Jr. (hereinafter sometimes referred to as the publishing company respondents), are copartners doing business under the name Army and Navy Publishing Co., with their principal place of business located in Baton Rouge, La. While three other individuals, William Andrew Benson, Porter Earl Dozier, and Florence Riddle Benson, were also joined in the complaint as respondents, these individuals severed their connection with the business in February 1948, conveying their entire interests to respondent Herbert S. Benjamin. In the circumstances the Commission is of the opinion that no purpose would be served by retaining these three individuals in the proceeding, and that as to them the complaint should be dismissed without prejudice. The terms respondents and publishing company respondents as used hereinafter will not include these

three individuals. The publishing company respondents are and for several years last past have been engaged in the business of publishing and selling books containing historical and photographic records of various military and naval units in the United States Armed Forces.

The respondents, Herbert S. Benjamin, Joan Clem Goldberger, and Herbert S. Benjamin, Jr., are also engaged, along with the respondents, Dorothy Dennis and Ann Shendle, in the making and sale of photographs of persons serving in the United States Armed Forces. These five respondents (sometimes referred to hereinafter as the photographic bureau respondents) are copartners trading under the name Army and Navy Photographic Bureau, and have their principal place of business in Baton Rouge, La.

PAR. 2. The publishing company respondents and the photographic bureau respondents cause and have caused their respective products, when sold, to be shipped from their respective places of business in the State of Louisiana to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their respective products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In form and general appearance the books published and sold by the publishing company respondents are somewhat similar to college annuals. They contain reading matters of a descriptive and historical nature with respect to the military unit involved and numerous pictures, including photographs of the personnel of the unit. Before undertaking the project, respondents contact the commanding officer of the unit, enlist his cooperation, and obtain authority or permission to take the pictures and gather the other material necessary for the book. Usually the unit cooperates closely with respondents in the preparation of the book, frequently supplying much of the material itself. On some occasions the unit has in fact supervised the entire project, even to the extent of specifying such details as the kind and weight of paper to be used in the book, the type, etc., and the price to be charged for the book. Usually a memorandum is issued by the commanding officer to the personnel of the unit stating that authority has been granted respondents to publish the book, and that the book is being prepared with the cooperation and under the supervision of the unit.

Sales of the books are solicited by respondents in two ways: Through contact with the men in the camps and by sales letters and circulars mailed to the men and to their families. In this sales material respondents' trade name Army and Navy Publishing Co. is used, to-

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gether with the company's post office and street address. Insofar as solicitations for orders for the books from the personnel of the units are concerned, respondents' contacts are usually not with the men individually, nor through the mails, but in group meetings held in the camps.

Since adopting the trade name Army and Navy Publishing Co. respondents have restricted their business activities to the publishing of books such as are here involved, that is, books portraying military units.

PAR. 4. As stated above, the photographic bureau respondents are engaged in the sale of photographs of persons serving in the Armed Forces, this business being carried on under the trade name Army and Navy Photographic Bureau. This business is a sideline which grew out of the publishing of the books. In gathering the material for the books photographs are made of the men in the unit, and subsequently the men and their families are offered an opportunity to purchase enlarged copies of these same photographs. The military units have nothing at all to do with the sale of the photographs, the cooperation and supervision of the units being limited to the preparation and publishing of the books.

PAR. 5. The principal charge made in the complaint herein is that respondents' trade names Army and Navy Publishing Co., and Army and Navy Photographic Bureau are misleading and deceptive as representing or implying that respondents' businesses are a part of or are connected with the United States Army or Navy, and that respondents' publications or photographs are produced by or under the auspices of the Army or Navy. There is no charge that respondents have made any representations to this effect aside from their use of the trade names. It is the trade names and these alone which are in issue.

PAR. 6. On the question of the effect of the trade names upon the public the record contains testimony from 15 witnesses, 7 of whom testified in support of the complaint and 8 on behalf of respondents. All of the seven witnesses whose testimony was introduced in support of the complaint had purchased either the books or photographs or both. The testimony of five of the seven was to the effect that they understood from the words "Army and Navy" in respondents' trade names that the businesses were a part of or connected with the armed forces. To all five the word "Bureau" in the name of the photographic company was a further indication that this business was connected with the Federal Government. All of these five witnesses were either wives or mothers of men in the service.

The testimony of the other two witnesses in this group (a serviceman and his wife) was to the contrary. To these witnesses the trade names had little or no significance other than indicating that the companies published and sold books and pictures relating to personnel of the Army and Navy.

All of the eight witnesses testifying for respondents are former officers or enlisted men in the Army and most of them had purchased histories of their respective units which had been published by respondents. In substance, the testimony of these eight witnesses was to the effect that respondent's trade name Army and Navy Publishing Co. did not give them the impression that respondents' business was a part of or had any official connection with the Armed Forces.

PAR. 7. In the opinion of the Commission the trade name Army and Navy Photographic Bureau is false per se and should be discontinued entirely. This is true not only because of the word "Bureau," which represents or implies that the business is a part of the Federal Government, but also because of the words "Army and Navy," which represent or imply that the business is a part of or connected with the Army and Navy and that the photographs are sold by or under the auspices of the Army or Navy. There is in fact no connection between respondents' business or the photographs sold by them and the Army or Navy. True, the pictures were made originally with the consent and assistance of the military units but they were made solely for use in the book. The subsequent sale by respondents of enlarged photographs of the men has no connection with the publishing of the book and is a matter with which the military units have nothing to do. The mere fact that the photographs are pictures of men in the Army and Navy is, in the opinion of the Commission, not sufficient to warrant the use of the words "Army and Navy" in respondents' trade name.

Consideration has been given by the Commission to the possibility of avoiding the absolute prohibition of the trade name by requiring the use, in immediate connection with the name, of some qualifying or explanatory statement to the effect that respondents' business is in fact a private business concern. The Commission is of the view, however, that as the name is false per se any additional words used in connection with it could serve only to contradict the name rather than qualify it.

PAR. 8. The other trade name, Army and Navy Publishing Co., presents a much more difficult question. In the opinion of the Commission the words "Army and Navy," as in the case of the trade name considered above, represent or imply that the business is a part of

or is connected with the Army and Navy, and that the publications are produced by or under the auspices of the Army and Navy. These representations, however, are in part substantially true. While respondents' business is not a part of nor connected with the Army or Navy, the books themselves are prepared and published with the express authority and permission and, to a substantial extent, with the assistance and cooperation and under the supervision of the military units involved. In no other way could the pictures and other material for the books be obtained. The books would therefore appear to be in the nature of semiofficial publications or publications produced under the auspices of military units. Of importance, also, is the fact that respondents restrict their business operations under this trade name to these military publications. The trade name is not used in connection with other publications.

In the circumstances the Commission is of the view that this trade name is not false per se, and that its misleading effect can be avoided by the use, in connection with the name, of an explanatory statement making it clear that respondents' business is in fact a private business concern. In selling their books respondents do not employ house-to-house sales agents. As heretofore stated, the books are sold to only two groups, the men in the service, to whom the matter is usually presented in group meetings, and the families of the men, who are solicited through the mail. There would appear to be little likelihood that the men in the service would be misled. As to the families of the men, the danger of deception or misunderstanding would appear to be avoided if respondents in their sales letters, circulars, invoices, etc., would accompany their trade name with a conspicuous statement to the effect that their business is a private business concern.

PAR. 9. While the complaint contained an additional charge against certain of the respondents (that these respondents had represented their business to be a corporation) the Commission is of the opinion and finds that this charge is not sustained by the evidence.

PAR. 10. The acts and practices of the respondents as herein set forth have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' identity and business status, and with respect to the origin and nature of respondents' products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' products as a result of the erroneous and mistaken belief so engendered.

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CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and briefs of counsel (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents (other than the respondents William Andrew Benson, Porter Earl Dozier, and Florence Riddle Benson) have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Herbert S. Benjamin, Joan Clem Goldberger, and Herbert S. Benjamin, Jr., individually and as copartners trading under the name Army and Navy Publishing Co., and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of books or other publications in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "Army" or the word "Navy," or any simulation thereof, as a part of or in connection with said respondents' trade name, unless in immediate connection with such name other words are used which clearly and conspicuously state that said respondents' business is a private business concern.

It is further ordered, That the respondents, Herbert S. Benjamin, Joan Clem Goldberger, Herbert S. Benjamin, Jr., Dorothy Dennis, and Ann Shendle, individually and as copartners now trading under the name Army and Navy Photographic Bureau, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of pictures or photographs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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Using the word "Army" or the word "Navy" or the word "Bureau" as a part of said respondents' trade name; or otherwise representing, directly or by implication, that said respondents' business is a part of or has any connection with the United States Government or the United States Army or Navy, or that said respondents' products are produced or sold by or under the auspices of the United States Government or any of its agencies.

It is further ordered, That all of the respondents named in the two preceding paragraphs shall, within 60 days from the date of service of this order upon them, 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, For the reasons set forth in the findings as to the facts in this proceeding, that the complaint herein be, and it hereby is, dismissed as to the respondents, William Andrew Benson, Porter Earl Dozier, and Florence Riddle Benson, without prejudice, however, to the right of the Commission to take such further action in the future with respect to these respondents as may be warranted by the then existing circumstances.

Complaint

IN THE MATTER OF
GEORGE LUXNER TRADING AS GEENEL MOTOR
PRODUCTS COMPANY

Docket 5667. Complaint, June 22, 1949—Decision, Feb. 17, 1950

Where an individual engaged in the interstate sale and distribution of breaker arms and adjustable contacts for use in connection with the ignition system of automotive motors—

Represented that said products, as packed or enclosed by him in manila envelopes and as invoiced, were original genuine parts manufactured by the Electric Auto-Lite Co. of Toledo, through placing upon said envelopes the statement "Original Auto-Lite Service Parts" and the words "Parts contained herein are *Genuine* The Electric Auto-Lite Co., Toledo, Ohio. Part No. IGP 3028-A Name of Part ----- Made in U. S. A."; and through invoicing the same to customers as "IGP 3028-A Contacts.";

The facts being that while the aforesaid number was that employed by said Electric Auto-Lite Co. to identify such particular products, those packaged and sold by said individual as above set forth were not original or genuine parts made by said Company, but were in fact produced by some other manufacturer;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, thereby causing it to purchase his said breaker arms and adjustable contacts:

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

Mr. Clark Nichols for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that George Luxner, trading as Geenel Motor Products Co., 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. Respondent George Luxner is an individual trading as Geenel Motor Products Co. with his principal place of business at Suite 1513, 80 Eighth Avenue, New York 11, N. Y.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the sale and distribution, among other things, of