

ANNUAL REPORT
OF THE
FEDERAL
TRADE COMMISSION

FOR THE

FISCAL YEAR ENDED JUNE 30, 1917

WASHINGTON
GOVERNMENT PRINTING OFFICE
1917

FEDERAL TRADE COMMISSION.

WILLIAM J. HARRIS, *Chairman.*

JOSEPH E. DAVIES.

WILLIAM B. COLVER.

JOHN FRANKLIN FORT.

VICTOR MURDOCK.

LEONIDAS L. BRACKEN, Secretary.

WILL H. PARRY.
Died April 21, 1917.

ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION.

WASHINGTON, D. C., *November 15, 1917.*

To the Senate and House of Representatives:

In compliance with statute the Federal Trade Commission herewith submits to Congress its annual report for the fiscal year ending June 30, 1917.

The work of the Federal Trade Commission during the fiscal year ending June 30, 1917, was of increasing importance. This was due not only to the normal increase in the demands made upon it as its functions and its opportunities for public service became more widely known but also on account of the special industrial difficulties and emergencies arising out of the disturbance of economic relations caused by war throughout the world as well as the entrance of the United States into the war.

An important development occurring just at the close of the fiscal year, which has absorbed a large part of the attention of the Commission since then, is the investigation of the costs of production of various commodities necessary for the conduct of the war. This work was done by direction of the President. The information on costs and other pertinent facts so obtained have been turned over to the President or to such authorities as were designated by him to consider in connection with the, negotiation of prices with producers, or with the fixing of prices by the Government, where authorized by law.

Also, just before the close of the fiscal year here reported on Congress directed a special investigation into the food industries and made an additional appropriation therefore which became available on June 30, 1917. A comprehensive investigation is being conducted in conjunction with the Department of Agriculture and also in cooperation with the Food Administration, which includes among other things a thorough study of the meat, flour, and food-canning industries.

The number of applications for remedial procedure by the Commission on the ground of unfair methods of competition or violation of the prohibitions of the Clayton Act against price discrimination and tying, contracts showed a decrease from the preceding fiscal year. As heretofore the questions thus presented were in most cases disposed of by conference rulings and voluntary adjustments and without recourse to formal complaints and the issuance of orders by the Commission. Nevertheless, in nine cases the Commission made formal complaint during the fiscal year, and in four cases the matter was, disposed of by the issuance of orders to cease and desist. The most noteworthy instance was in the case of the Federal Trade Commission *v.* A. B. Dick Co. which involved the employment of tying

ANNUAL REPORT OF THE FEDERAL TRADE
COMMISSION. 5

The coal investigations, which covered both anthracite and bituminous coal were originally made for different reasons, but in the case of each investigation the extraordinary price advances occurring shortly thereafter and throughout last winter and spring engaged the attention of the commission. In the case of the anthracite coal investigation, which was started
investigationthe

both loaded and empty--continues to limit the output of the mines. Movements of coal cars so slow as to average only 12 or 15 miles is per day are now matters of common knowledge. No effort at stimulation, either by way of exhortation to labor or increased prices to operators, can avail against the absolute limit of production set by the misuse of coal-car equipment, of which if properly used, there is an adequate supply.

The Commission, in its report of June 20, page 16, also said:

“Experience has shown that in the United States the normal balance in transportation which brings about a maximum of production with maximum economy occurs when out of every 100 tons of originating freight approximately 56 tons are unmanufactured mineral products and 44 are manufactured products, foodstuffs, and other commodities, and when of the 56 tons of mineral products 35 tons are coal. Of these 35 tons of coal the railroads themselves consume about 12 tons.

“The present balance of transportation is a great reduction in the proportion of the cars furnished for the transportation of coal. The railroads, however, are consuming their full quota of coal, so that while under favorable and natural conditions 35 tons of coal would be moved, out of each 100 tons of freight, there is now being moved very much less coal. The entire coal shortage is thrown upon the industries of the country and the domestic users, who, instead of having a coal supply equal to two-thirds of the total coal movement, are, reduced to a small and continually diminishing ratio, and this in a time when every effort is being made to stimulate the industrial effectiveness of the Nation.

“The Commission believes that the coal industry is paralyzing the industries of the country, and that the coal industry itself is paralyzed by the failure of transportation.”

The Commission believes that subsequent events have demonstrated the correctness of this statement and that in the absence of sufficient reformation in the use of rolling stock the coal situation in this country will continue to increase in its menace to the public welfare.

In its report of June 20, the Commission also said that (p. 15) “Whatever measure of success has marked the efforts of the Commission with relation to anthracite coal has been largely because the car supply has been adequate by reason of the close corporate relation between rail transportation and anthracite production.

“Quite the contrary condition exists with relation to bituminous and rail transportation and with relation to water transportation as to both kinds of coal.”

This statement of the Commission seems to have been open to a construction that a close corporate relation between coal mining companies and transportation agencies is desirable. On the contrary, the Commission was seeking simply to show that if sufficient interest is present transportation

- (8) Simulation of slogans.
- (9) Use of leaders.
- (10) Use Of coupons.
- (11) Cutting off competitors' supplies and credit.
- (12) Bribery and enticement of employees.
- (13) Use of bogus independents.
- (14) Enhancing prices of raw materials.
- (15) Institution of malicious and vexatious suits.
- (16) Inducing breach of contract.
- (17) Passing off of goods.
- (18) Use of same or similar trade name.
- (19) Conspiracy to injure competitors.
- (20) Espionage.
- (21) Exclusive dealing contracts.
- (22) Defamation of name and goods.

Many of the applications for complaint require long, extensive, and painstaking investigation of the facts by the corps of examiners of the Commission who are attorneys under the immediate direction and supervision of the chief examiner. Most of such investigations develop intricate questions of law and fact, to be briefed and determined by the legal staff. After the investigation has been made the report of the investigation is presented to the board of review, consisting of two lawyers and one economist. This board reviews the entire investigation and the legal questions involved and makes its report thereon to the Commission, which then determines upon a review of the entire matter, whether the application shall be disposed of by dismissal or a formal complaint issued thereon. Upon recommendation by the Commission that a complaint be issued and a proceeding instituted, the matter is referred to the chief counsel's office for the drafting of the complaint and the institution and conduct of the proceedings.

On June 30, 1916, there were pending before the Commission 139 applications for complaint, and these, together with the 154 received up to June 30, 1917, make a total of 293 such applications. Of this number, 102 were disposed of during the fiscal year ending June 30, 1917, without formal proceedings, either by conference rulings or resolutions of the Commission, leaving undisposed of at the end of the fiscal year 191 applications, which are now under investigation.

In its last annual report the Commission undertook somewhat extensively to outline its methods of procedure in the handling of applications for complaints and the enforcement of those statutes which it is empowered to enforce. The same methods have been in the main adhered to. While it is not considered necessary to reiterate in this report what was there said in reference to methods of procedure, still in view of the fact that the Commission is a new administrative body, having important quasi-judicial powers, the methods of procedure in the exercise of its quasi-judicial powers are of special interest, and what was said thereon in the last annual report is referred to here.

A brief resume of the adversary proceedings under consideration by empo

ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION.

9

strictions by which the purchasers of the respondent's patented machines and of its patented stencil paper were required to use these machines and paper only with supplies and machines furnished by the respondent, in violation of section 3 of the Clayton Act. The Commission completed taking the testimony in the proceeding just prior to the decision of the Supreme Court in Motion Picture Patents Co. v. Universal Film Co. (37 Sup. Ct. Rep., 416; 243 U. S.), which held that the patent statute did not confer any right on the patentee to impose such restriction, and that its validity must, therefore, be determined by reference to the general law. Upon the publication of this decision the A. B. Dick Co. declined to defend further in the Commission's proceeding and upon the record made up to that date findings as to the facts were made by the Commission.

U. S. PATENT OFFICE: OFFICE OF THE COMMISSIONER OF PATENTS AND TRADE MARKS, WASHINGTON, D. C. 20540

PROCEEDINGS INSTITUTED SINCE JULY 1, 1916.

Complaint No. 6.--Federal Trade Commission *v.* Fleischmann Co. Cause: Stifling and suppressing competition by undue sampling, by distribution of gratuities, by making contributions to association and conventions, by extensive entertainment, by making deliveries of yeast without any immediate charge therefor, by cash payments, substituting competitors' samples and deliveries, trailing competitors' agents, misrepresenting competitors' methods, by concealing its control of a supposed independent yeast company, etc., ill violation of section 5 of the Federal Trade Commission act; and, further, attempting to create a monopoly by price fixing conditioned on the nonuse, of competitors' goods in violation of section 3 of the Clayton Act.

Complaint No. 7.--Federal Trade Commission *v.* Muenzen Specialty Co., of New York. Cause: Unfair methods of competition in connection with sale of vacuum cleaners by misrepresentation in advertising, by injurious statements relative to competitors' cleaners, and competitors' financial standing, etc., in alleged violation of section 5 of the Federal Trade Commission act.

Complaint No. 8.--Federal Trade Commission *v.* Victor Talking Machine Co., of New Jersey.

to the Commission, and that the activities of the Commission would in consequence thereof be almost wholly directed to economic investigations. While, to a considerable extent, on account of the

ANNUAL REPORT OF THE FEDERAL TRADE
COMMISSION. 13

ble and the principles of law involved and a presentation thereof to the Commission by attorneys on the legal staff.

The inordinately high prices imposed for certain commodities which were subject to investigation by the Commission led it to the inquiry as to the power of Congress, in absence of a state of war, to fix prices of necessities, with a view to making recommendations to Congress as to legislation thereon (this applies particularly to gasoline, paper, and coal) and since the commencement of the war the Commission has deemed it its duty to recommend to Congress the enactment of certain legislation for the protection of the public against exorbitant prices, and such proposed legislation was very carefully considered, and considerable the of the attorneys has been devoted to work of this character.

TTD a 035 716 07d (ms) 51 2 01DD 0000 03 01 W 01 (work) Tj 20.28 0

tuted by the Commission against the members of the Bureau of Statistics to cause them to cease and desist from certain practices which were instrumental in raising prices. In November the defendants signed a stipulation by which the Bureau of Statistics was dissolved.

Petroleum industry.--In response to resolutions of the Senate (No. 109, passed June 18, 1913 and No. 457, passed Sept. 28, 1914), a comprehensive investigation was undertaken into the production, transportation, refining, and marketing of petroleum and its products.

During the fiscal year 1917 the Commission was engaged in the completion of its report on the price of gasoline, described below. It is one of a series of reports on the petroleum industry, of which the report on pipe-line transportation of petroleum was issued in 1915. Definite plans were formulated for the issuance of two additional reports, which will complete the investigation. Considerable progress has been made in the preparation of a report on the prices of crude, oil, the methods by which such prices are fixed, and the profits secured by different companies at the different in the production and distribution of petroleum products.

In connection with the investigation of competitive conditions and inter-company relations in the oil industry, the use of unfair methods of competition in some instances has been indicated.

The investigation of the volume and cost of production of crude oil has been continued throughout the year.

An investigation of the advance in the price of gasoline which occurred in 1915 was begun toward the end of the same year and carried on during 1916. This investigation was partly in response to Senate resolutions passed on June 18, 1913, and on September 28, 1914, which directed investigations into the price of oil in Oklahoma, including a comparison of the prices with the general market level in the United States, quality and

ANNUAL REPORT OF THE FEDERAL TRADE
COMMISSION. 17

prices were accumulated, thus withholding great quantities from the market and tending unreasonably to advance the price of crude oil.

The various Standard companies, moreover, occupy a dominant position in most parts of the United States and the, absence of substantial competition among these companies was an appreciable factor in causing the advance. The report points out that a group of companies which has a dominant position in the industry should act with especial care and moderation with regard to the extent to which it takes advantage of a period of scarcity to advance prices unduly above cost. The various Standard companies are subject to a community of interest, based on the fact that a majority of their stockholders are the same individuals, and this community of interest embraces not only refiners, but also oil producers and pipe lines. Under such circumstances competition can hardly be expected to work effectively and fairly or to adjust prices to cost with any reasonable precision. Several important officers of Standard companies have large holdings of stock in other Standard companies. The Standard marketing companies have divided the country into 11 distinct marketing territories following State lines and there is no substantial Competition in the sale of gasoline among them.

As remedies for the conditions which produced the artificial and unnecessary part in the advance of gasoline prices the Commission made the following suggestions as alternative courses of action:

1. To prevent the control of the market from being exercised through common ownership, five courses of possible action are suggested--

(a) Possible action by the Department of Justice in view of the facts disclosed by the

the beet-sugar factories in the United States, except two small ones, during the five-year period ending with the business year of 1913-14.

The report also discussed in considerable detail the matter of efficiency in the beet-sugar industry, pointing out the opportunities for improvements in this respect.

The economic position of the industry was not discussed in the report. A chapter dealing with this subject was prepared, but it, together with all data collected during the investigation, has been turned over to the United States Tariff Commission.

Prices of American flags.--Pursuant to resolutions of the Senate and the House of Representatives, the Commission made an inquiry into the causes of the increase in the prices of American flags following the declaration of war. The records of leading flag manufacturers and dealers were searched for evidences of the use of unfair methods of competition or of unlawful combination. It was found that, because of the extraordinary public demand for flags, competition between sellers had been virtually suspended throughout the United States. Many manufacturers and dealers took advantage of the opportunity thus presented to charge exorbitant prices. The Commission, in its report on this subject, urged Congress to enact laws adequate to prevent such extortion. Complaints charging the use of unfair methods of competition were issued on September 14, 1917, against certain individuals, and the evidence of unlawful combination in the flag industry has been transmitted to the Department of Justice.

Lumber industry.--The general investigation of the lumber industry commenced during the fiscal year 1916 was continued, especially with respect to the fundamental conditions in private holding of timber and the manufacture of lumber and with methods of trade organization in the lumber industry. During the fiscal year 1917 the Commission has assisted the Forest Service in the preparation and publication of several numbers of its series of "Studies in the Lumber Industry." In its work on the problems of the lumber industry it has had the cooperation of the Bureau of Foreign and Domestic Commerce and the Forest Service. As a result of this joint investigation there was created in April, 1917, an advisory council on forest industries to study continuously the problems of timber-using industries and to determine a rational public policy with respect to standing timber resources. On this council are represented the Forest Service, the Bureau of Foreign and Domestic Commerce, and the Federal Trade Commission. Conferences and hearings with other Government agencies and with representatives of the industry have been continued.

Coal industry.--During the past fiscal year an investigation of the anthracite and bituminous coal industry was conducted by the Commission. The anthracite investigation was in answer to Senator Hitchcock's resolution, adopted June 22, 1916 (S. Res. 217, 64th Cong., 1st sess.), and pursuant to Senator Calder's resolution, adopted April 30, 1917 (S. Res. 51, 65th Cong., 1st sess.). The bituminous investigation was in response to Representative Rainey's resolution agreed to by the House of Representatives August 18, 1916 (H. Res. 352, 64th Cong., 1st sess.). The anthracite investigation was initiated to determine whether the price

ANNUAL REPORT OF THE FEDERAL TRADE
COMMISSION. 19

advance made by the producers on account of increase in wages

the time when maximum prices were fixed by the president under the powers presidesTj rs

ANNUAL REPORT OF THE FEDERAL TRADE
COMMISSION. 21

65th Cong. 1st, sess.) It was pointed out that the underlying causes of the abnormal bituminous-coal situation were as follows: Increased demand for coal, shifting markets, inadequate transportation facilities, labor conditions, increased cost of production and distribution, lack of sufficient storage facilities, and speculative activities of some mine operators and brokers.

At the request of the governor of Indiana and of the Ohio State Council of Defense special investigations into the cost of production of coal in those States were made under the supervision of agents of the Commission, with the assistance of accountants placed at its disposal by the respective State authorities for this purpose. Data of a similar nature relating to coal for the United States Navy were compiled and submitted to the Secretary of the Navy at his request.

Toward the close of the fiscal year, while remedial legislation was under consideration by

h i s r e q u e s t

chiefly to the following particulars of their business, namely: Kind of business, principal products made or sold, capital stock, bonds, surplus, net sales for year, net profit or loss from operations, depreciation provision for bad debts, etc.

It was intended after compiling these returns to send to each concern reporting a statement of the combined results of the inquiry with respect to the industry in which the reporting concern was interested.

The questions asked were such that every manufacturing concern should be able to answer them without difficulty and with little or no labor. The returns, however, were disappointing. In a large proportion of cases they were incomplete and in frequent instances of doubtful accuracy. In view of these facts the Commission felt constrained to withhold the issuance of the combined statements originally planned. Nevertheless this work proved to be of considerable value indirectly and plainly indicated the importance, and desirability of more intelligent accounting methods in business. It also proved that if the Commission

to of value

ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION.
23

is evidently a duty of the Government, and if it fulfilled this function in an adequate

became available on July 1, 1917. The Department of Agriculture also received an additional appropriation on this account, and in accordance with the directions of the President is working in close cooperation with the Commission on this investigation. Only preliminary study was given to this inquiry during the fiscal year here reported on, but since that time the work has been actively prosecuted.

The work of the Commission is directed chiefly to the investigation of the preparation and marketing of meats, grain foods, and canned vegetables and fish, and also to the operations of produce exchanges, the Department of Agriculture devoting its attention chiefly to the raising of grain, vegetables, and live stock, and also to certain branches of marketing for which its organization affords special facilities. Questions of violation of the antitrust laws or of unfair methods of competition wherever found are naturally attended to by the Commission. One of the principal aims of the whole investigation, however, is to ascertain whether the existing methods of production, manufacture, and distribution are economical and efficient, and if not, what reforms or improvements could be adopted to make them more so. In this connection the Commission is also working in close cooperation with the Food Administration, which has extensive powers of regulation and can use to advantage, in its current work, the information gathered by the Commission.

COSTS OF PRODUCTION OF WAR MATERIAL, ETC.

The President, as already stated, just before the close of the fiscal year here reported on, called upon the Commission for assistance in ascertaining the costs of production of various materials necessary for the Government in the prosecution of the war. Only a little work on this subject was done before July 1, 1917, which was chiefly in connection with the costs of steel and lumber for shipbuilding, and of coal for the Navy. Since then the work has been greatly expanded and in many cases has been made to cover practically the whole industry, whether the producers were engaged in supplying the Government or not. This is due to the policy of the Government, in insisting on reasonable prices for its own purchases, to procure them also for the public. In the case of fuel, particularly coal, the establishment by law or agreement of a general price regulation for such commodities has made this course necessary.

In the ascertainment of costs of production of coal and with respect to other data regarding the coal industry, the Commission has worked in close cooperation with the Fuel Administration. For most products however, the prices are not fixed by law but by voluntary agreements with the producers. In respect to such products the Commission has ascertained and is continuing to ascertain costs and other data for the use of the President, but has not been changed with the duty of negotiating prices. Among the chief commodities for which cokes have been and are being currently obtained are coal and coke, iron ore, iron and steel products of numerous kinds, various petroleum products, particularly fuel oil and gasoline, lumber, especially for shipbuilding, cement, fire brick, copper, lead, zinc, aluminum, nickel, and certain other metals, or alloys, including in some

LIBRARY.

As the lack of specific authority in the appropriation for the purchase of books and periodicals has been

ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION.

27

A more detailed analysis of the personnel is shown in the following statement:

Analysis of the personnel of the Federal Trade Commission and its staff at the close of June 30, 1917.

5 commissioners, at -----	\$10,000
1 secretary, at -----	5,000
5 clerks to commissioners, at --	1,500
1 chief clerk, at -----	2,000
1 disbursing clerk, at -----	2,000

The total personnel of the Commission and its staff at the end of the fiscal year 1917 was 193, as compared with 224 at the end of the fiscal year 1916.

APPROPRIATIONS AND EXPENDITURES.

The appropriations of the Commission for the fiscal year ended June 30 1917, under the sundry civil appropriation act approved July 1, 1916, and the deficiency appropriation act approved April 17, 1917, were \$519,080. In addition to this amount the Commission

¹ Of these 9 clerks, at \$1,400, 1 was carried on lump-sum roll.

² Of these 18 clerks at \$1,200, 4 were carried on lump-sum roll.

had the sum of \$47,945.92 which was allowed by the ruling of the Comptroller of the Treasury, under the second paragraph of section 3 of the act creating the Commission. This fund consisted of the unexpended balance of the appropriations for the Bureau of Corporations for the fiscal years ended June 30, 1913 and 1914.

The expenditures of the Commission for the fiscal year ended June 30, 1917, were \$472,501.20. The appropriations and expenditures are tabulated below.

	Appropri- ated.	Expended.
Salaries, commissioners, secretary, ect -----	\$154,580.00	\$124,425.94
Compensation, travel expenses, and per diem in lieu of subsistence --	244,500.00	244,500.00
Compensation, travel expenses and per diem in lieu of subsistence (deficiency) -----	50,000.00	49,887.75
Contingent expenses -----	15,000.00	113,081.42
Witness fees and milfc0.0364 Tw (Salaries, commissioners, secretary, ect 8Tw (Witness fees and mTc 0.03 Tw -9.4T38) TjN,444 0		

Office -----
Field -----

3,275.31
23.60

ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION.

29

Advice requests -----	\$4,002.16
Beet sugar (office) -----	89.43
Foreign trade (office) -----	6,246.78
Fertilizer -----	17.26
Lumber:	
Office -----	3,695.87
Field -----	1,413.07
Miscellaneous:	
Legal--	
Office -----	14,380.67
Field -----	186.68
Economic (office) -----	109.79
Oklahoma oil:	
Office -----	26,317.50
Field -----	14,906.71
Resale prices (office) -----	405.47
Trust legislation (office) -----	91.58
Informal complaints:	
Legal--	
Office -----	32,741.23
Field -----	10,779.74
Economic--	
Office -----	1,836.87
Field -----	185.45
Formal complaints:	
Legal--	
Office -----	2,963.51
Field -----	3,700.21
Economic-	
Office -----	5.82
Field -----	126.10
Details -----	181.88
Printing and binding -----	23,610.54
Total -----	(Resale prices (off) tails

Total ----- (Resale prices (off) tails

year, and with the entry of the United States into the war additional duties of great importance have been imposed upon it immediately connected therewith.

Corporation reports.-As already indicated in this report, it would be of great benefit to the public as well as to the business world, if

the existing powers of the Commission to obtain reports in a comprehensive way regarding business corporations in general and more particular information regarding corporations engaged in the more important and basic industries, could be put into effect by an adequate appropriation. Before the war, when the entry of the United States was imminent many requests came to this Commission for information, much of which might reasonably be inferred to be in its possession, in view of its powers, but which the Commission had been unable to collect for lack of funds. In the absence of official Government data, private, individuals and organizations attempted to supply this deficiency, and since then some of the information has been collected by the Advisory Commission of the Council of National Defense, which is a semi-public organization. This organization, however, lacks the necessary powers to collect all the collected information and to the

of and

mediate products in the industry affected and of the distribution of the final products to the consumer. In this connection also should be considered the question whether bona fide contracts made prior to the passage of a price-fixing law should be allowed to be enforced. This Commission is of the opinion that the exact merits of the proposition might differ somewhat in different industries. Tj 4.08 03/10/2018. TDsa

number of capitalists. In its report on gasoline prices the Commission indicated the importance of a more effective dissolution of this combination, andn,

EXHIBIT 1.

FEDERAL TRADE COMMISSION ACT.

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the late year 1914. That the

ANNUAL REPORT OF THE FEDERAL TRADE
COMMISSION.

records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission for the fiscal year 1916 and for the fiscal year 1917.

proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner

ANNUAL REPORT OF THE FEDERAL TRADE
COMMISSION.

35

order, or other process registered and mailed as aforesaid shall be

right to copy any documentary evidence of any corporation being investigated or proceeded against; and the Commission Tc 5mms0328 0 TcDa6o 0 TD on

commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent

and such future shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the Commission who shall make public any information obtained by the Commission, without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

SEC. 11. Nothing contained in this act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust acts or the acts to regulate commerce, nor shall anything contained in the act be construed to, alter, modify, or repeal the said antitrust acts or the acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

EXHIBIT 2.

PROVISIONS OF THE CLAYTON ACT WHICH CONCERN THE FEDERAL TRADE COMMISSION.

“Commerce,” as used herein, means trade or commerce among the Several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this act contained shall apply to the Philippine Islands.

The word “person” or “persons” wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers, of commodities, on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing any line of commerce:

further, w (ewas the (m) of 791833 De 11003 1172 (or) 17520

Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the Commission or Board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this act, it shall issue and serve upon such person a complaint stating its charges in that respect, and

ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION.

41

containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show d the

manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust acts.

Complaints, orders, and other processes of tile commission or board under this section may be served by anyone duly authorized by the commission or board, either (a) by delivering a copy thereof to the person to be served. or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by tile person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint,

EXHIBT 3.

RULES OF PRACTICE BEFORE THE FEDERAL TRADE COMMISSION.

I. SESSIONS.

The principal office of the commission at Washington, D. C., is open each business day from

authorized by the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director of

the corporation or association to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, corporation, or association; or (c) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process, setting forth the manner of said service, shall be proof of the same, and the return post-office receipt for said complaint, order, or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

V. INTERVENTION.

Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which lie or it claims to be interested. The commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem just.

Applications to intervene must be on one side of the paper only, on paper not more than 8 ½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1 ½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10 ½ inches long, with inside margins not less than 1 inch wide.

VI. CONTINUANCES AND EXTENSIONS OF TIME.

Continuances and extensions of time will be granted at the discretion of the Commission.

VII. WITNESSES AND SUBPOENAS:

Witnesses shall be examined orally, except that for good and exceptional cause for departing from the general rule the Commission may permit their testimony to be taken by deposition.

Subpoenas requiring the attendance of witnesses from any place in the United States at anyfor

transcript filed shall include argument or debate.

X. MOTIONS.

A motion in a proceeding by the Commission shall briefly state the nature of the order applied for, and all affidavits, records, and other papers upon which the same is founded, except such as have been previously filed or served in the same proceeding, shall be filed with such motion and plainly referred to therein.

ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION.

45

XI. HEARINGS ON INVESTIGATIONS.

When a matter for investigation is referred to a single commissioner for examination or report, such commissioner may conduct or hold conferences or hearings thereon, either alone or with other commissioners who may sit with him, and reasonable notice of the time and place of such hearings shall be given to parties in interest and posted.

The general counsel or one of his assistants, or such other attorney as shall be designated by the Commission, shall attend and conduct such hearings, and such hearings may, in the discretion of the commissioner holding same, be public.

XII. DEPOSITIONS IN CONTESTED PROCEEDINGS.

The commission may order testimony to be taken by deposition in a contested proceeding. Depositions may be taken before any person designated by the commission and having power to administer oaths.

Any party desiring to take the deposition of a witness shall make application in writing, setting out the reasons why such deposition should be taken, and stating the time when, the place where, and the name and post-office address of the person before whom it is desired the deposition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the commission will make and serve upon the parties of their attorneys an order wherein the commission shall name the witness whose deposition is to be taken, and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is to be taken, so specified in the commission's order, may or may not be the same as those named in said application to the Commission.

The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form by the officer. After the deposition has been so certified it shall, together with a copy thereof made by such officer or under his direction, be forwarded by such officer under seal in an envelope addressed to the commission at its office in Washington, D. C. Upon receipt of the deposition and copy the commission shall file in the record ins6.0n such

Unless otherwise ordered, briefs may be filed at the close of the testimony in each contested proceeding. The presiding commissioner or examiner shall fix the time within which briefs shall be filed and service thereof shall be made upon the adverse parties.

All briefs must be filed with the secretary and be accompanied by proof of service upon the adverse parties. Fifteen copies of each brief shall be furnished for the use of the commission, unless otherwise ordered.

Application for extension of time in which to file any brief shall be by petition in writing, Stating the facts upon which the application rests, which must be filed with the commission at

EXHIBIT 4.

CONFERENCE RULINGS OF THE FEDERAL TRADE COMMISSION.

EXPLANATORY NOTE.

w28 TRADE COMMISSION

the trade announcing that it had discontinued the sale of the "off" brand of sugar, and the applicant requesting to be permitted to withdraw its application, and the corporation complained of assuring the Commission that it had discontinued the sale of sugar branded in the manner complained of and had no intention of resuming the sale of this package: *Held*, That the method of competition complained of having been permanently discontinued, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

2. Public interest--Competitive method discontinued.--On application for the issuance of a complaint, it appeared that a manufacturer engaged in interstate commerce issued a publication in which, under the guise of trade news,

misinformation of a character unfair and detrimental to the applicant's business was circulated. Upon investigation by the Commission the applicant advised that the use of the alleged unfair method had been discontinued and the party complained of assured the Commission that its policy had changed with a change of management and no such practice would in the future be engaged ~~policy~~ applicant's h e

competitor, and jurisdiction of the commission in such matters.--On inquiry as to the right of one manufacturer to buy out a competitor in the same line of business: *Held*, That the only jurisdiction of the Commission in respect of such transactions is to enforce the provisions of section 7 of the Clayton Act prohibiting the acquisition by any corporation engaged in interstate commerce of where the tendency of such acquisition may be to substantially lessen competi-

ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION.

49

tion between such two corporations, or to restrain interstate commerce, or to create a monopoly; and also possibly to enforce section 5 of the Federal Trade Commission Act, if such purchase either of property or of capital stock in connection with other circumstances might constitute an unfair method of competition. *Held, also,* That the mere purchase of the property of such competitor other than capital stock is not prohibited by the Clayton Act or the Federal Trade Commission Act.

As to the validity of such purchase of property or capital stock under the Sherman Act, the Commission expresses no opinion.

9. **Exclusive agency.**--On inquiry by a piano manufacturer whether the following clause in a "consignment agreement" is in contravention of the Clayton Act, to wit:

Item 3. The factor shall offer, sell, or lease the pianos consigned to him by the consignor only to persons residing in the counties of _____ in the State of _____ a r r a n g e m e

facturer; nor to countermand this order except on payment to _____ Manufacturing Co., as liquidated damages, 20 per cent of the net amount of goods hereby purchased.

Held, That section 3 of the Clayton Act does not prohibit manufacturers selling their product exclusively through one dealer in a given territory and requiring the dealer not to sell their product outside of the territory assigned.

14. **Refusal to sell.**--On application for the issuance of a complaint, it appeared that certain manufacturers, pursuant to their established sales policy of selling only to local retail dealers, refused to sell to the applicant, a retail dealer doing business principally by mail, a certain commodity for shipment direct from the mills to consumers in a state where the applicant maintained no place of business. On investigation by the Commission it appeared that there was no agreement or understanding among the manufacturers complained of t of.u3tgate089 TcmTn01g

manufacturers selling their product exclusively through the dealer in a given territory. A refusal to sell to others in such territory under such circumstances is therefore not unlawful. Whether a mere refusal to sell under any circumstances or for any reason

ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION.

51

interstate commerce, having selected an exclusive agent or distributing dealer in certain territory, refused to sell to another dealer within this territory. *Held*, That neither the Federal Trade Commission Act nor the Clayton Act prohibits manufacturers establishing exclusive agencies or assigning exclusive territory to dealers. Under these circumstances a refusal to sell to others than such agents or distributors is therefore not unlawful under these acts.

22. **Railroads--Jurisdiction.**--On application for the issuance of a complaint as to abandonment by an interstate railway company of part of a branch line and its purpose to abandon more of it: *Held*, That the Commission has no jurisdiction of the subject matter of this complaint.

23. **Interstate commerce--Jurisdiction.**--On inquiry whether a local merchant in offering an automobile free to the customer drawing a specified number is practicing an unfair method of competition: *Held*, That, as interstate commerce is not involved, the Commission has jurisdiction to determine whether or not the act complained of is unlawful.

24. **Interstate commerce--Jurisdiction.**--On application for the issuance of a complaint, a retail dealer alleged that a competitor, engaged in business in the same city, sold goods below the price at which the applicant could purchase them. *Held* That, as interstate commerce is not involved, the Commission has no jurisdiction to determine whether or not the practice complained of is unlawful.

25. **Interstate commerce--Jurisdiction.**--On application for the issuance of a complaint, it appeared that a retail dealer was selling a well-known make of underwear much below the customary price, to the injury of other dealers in the same territory. *Held*, That interstate commerce is involved, and the Commission has jurisdiction to determine whether or not the practice complained of is unlawful.

25.1

commerce--Jurisdiction.--

On application for theTj 06 T66T

labor union is not engaged in commerce, the Commission has no jurisdiction to determine whether or not the practice complained of is unlawful.

33. **Refusal to manufacture and sell--Competition--Jurisdiction.**--On application for the issuance of a complaint, it appeared that a company engaged in the manufacture of bottle crowns refused to make certain crowns for the applicant, assigning as the reason that the crowns ordered would constitute an in-

fringement of the trade-mark of another customer, a competitor of the applicant. It did not appear that the refusal complained of was induced by the competitor. *Held*, That, as the facts do not disclose a method of competition, the Commission is without jurisdiction to act in the premises.

34. **Interstate commerce--Jurisdiction.--**On application for the issuance of a complaint, it appeared that the proprietors of certain small coal mines refused to sell to a retail dealer in the immediate vicinity except through a competing dealer and, through the purchase of other near-by mines, cut off his supply of coal. *Held*, That, as interstate commerce is not involved, the Commission has no jurisdiction to determine whether or not the practice complained of is unlawful.

35. **Interstate commerce--Jurisdiction.--**On application for the issuance of a complaint, it appeared that a retail dealer competing with the applicant, both doing business only within the State, discriminated in price between different localities in the sale of a commodity. *Held*, That, as interstate commerce is not involved, the Commission has no jurisdiction to determine whether or not the practice complained of is unlawful.

36. **Procedure--Combinations in restraint of trade.--**On application for the issuance of a complaint, suggesting unlawful combinations by companies engaged in interstate commerce in restraint of such commerce, no unfair method of competition being alleged: *Held*, That the matter thus involved should be referred to the Department of Justice.

37. **Clayton Act-Section 3-Pending litigation.--**

of, and would, if continued, have

ANNUAL REPORT OF THE FEDERAL TRADE
COMMISSION. 53

staple articles, in which there was competition from the applicant, at a delivered price, absorbing all freight charges. The effect of such freight absorption by the corporation complained of was

dealing exclusively with one firm in a given territory. Upon the facts presented a refusal to supply others in such territory is therefore not unlawful.

46. **Infringement of registered trade-mark--Public Interest.**--On application for the issuance of a complaint it was alleged that certain registered trade-marks of the applicant were being infringed. It appears that Congress has provided a special Federal remedy for the redress of alleged infringements of

registered trade-marks (sec. 17, Trade-Mark Act, 33 U. S. Stats. at Large, 775; and par. 7, sec. 24, Judiciary Act, 36 U. S. Stats. at Large, 1092), whereby unusual advantages are given a complainant by being permitted to bring suit in a Federal court irrespective of citizenship of parties or of amount of damages sought. *Held*, That where the conditions complained of involve nothing more than a question of infringing registered trade-marks, a proceeding will not be instituted in the absence of important considerations of public interest.

47. **Misbranding--Competitive method discontinued.**--On application for the issuance of a complaint, it appeared that the applicant was engaged in manufacturing an article in which deer hair is used, and selling the same in interstate commerce, and that a competitor manufactured and sold similar articles marked "100% Deer Hair," whereas in fact they contained approximately 50 per cent goat hair which was worth considerably less than deer hair. After an investigation by the Commission the company complained of discontinued the practice and assured the Commission that it would not be resumed. In view of the fact that the practice complained of has been permanently discontinued, it is *Held*, That further action by the Commission would not be to the interest of the public.

48. **Unfair competition--Refusal to sell.**--On application for the issuance of a complaint, it was alleged that a corporation engaged in the manufacture and sale of goods in interstate commerce refused to sell to the applicant certain commodities manufactured by it. It was further alleged that this refusal to sell was made at the direction of an officer of the corporation complained of, who was also the president of another corporation competing with the applicant. On investigation it appeared that the refusal to sell was made on personal grounds and was not made for the purpose, and for the purpose of the corporation complained of.

r

avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be in the interest of the public.

50. **Misbranding--Misleading labeling isbranding--(b) (1) of the FDCA, 21 CFR 1.01 TcEe**

was not genuine silk, and that such manufacturer advertised and sold said fabrics under such labeling in interstate commerce.

Upon investigation, and after informal conference with the respondents, it appeared that the goods labeled as "St. Regis Silk" in fact contained no genuine or cocoon silk, and that such manufacturer advertised and sold said fabrics generally, in interstate commerce, under such label; and

It appeared further that respondents are ready and willing to cooperate with the Commission to end all such unfair methods in said industry and trade; and

It appeared further that respondents have now discontinued the manufacture of the goods formerly labeled "St. Regis Silk," and that respondents have also taken steps permanently to discontinue all other methods of labeling and advertising used by them which may be unfair to competitors or may deceive the consuming public.

Held: That such practice of labeling, advertising, and selling in interstate commerce, fabrics advertised and labeled as "St. Regis Silk," when in fact the fabric the complained of contain no genuine or cocoon silk, is an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act, in that such practice is calculated to deceive the consuming public, and thereby to injure others who are engaged in selling a similar class of fabrics under labels and advertisements which correctly designate their product, and also to injure those engaged in selling genuine silk fabrics: *Held further,* That respondents having taken steps permanently to avoid all unfair competition in the matters complained of, and to avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be in the interest of the public.

51. Misbranding--Misleading labeling and advertising--Competitive method discontinued.--On application for the issuance of a complaint, it is alleged that a manufacturer labeled certain fabrics as "Silk Armure" and "50-inch Silk Armure," which in fact were not genuine silk, and that such manufacturer advertised and sold said fabrics under such labeling in interstate commerce.

Upon investigation, and after informal conference with the respondents, it appeared that the fabrics labeled as "Silk Armure" in fact contained only 20 per cent genuine, or cocoon, silk and 80 per cent of other material ; that the fabrics labeled "50-inch Silk Armure" contained only 22 per cent genuine, or cocoon, silk and 78 per cent of other material; and that such manufacturer advertised and sold each of said fabrics generally, in interstate commerce, under such respective labels; and

It appeared further that such practices in this industry have grown up gradually and partly through the necessity of meeting competitively like practices in others; and

It appeared further that respondents are ready and willing to cooperate with the Commission to end all such unfair methods in said industry and trade; and

It appeared further that respondents have now changed the labels of such fabrics from "Silk Armure" and "50-inch Silk Armure" to "Armure," and that respondents have also taken steps permanently to discontinue all other methods of labeling, and advertising used by them which may be unfair to competitors or may deceive the consuming public.

Held, That such practice of labeling, advertising, and selling in interstate commerce fabrics advertised and labeled as "Silk Armure" and "50-inch Silk Armure" without qualifying terms which clearly designate that class of fabrics composed partly of silk, when in fact the fabrics complained of are composed only in part of genuine, or cocoon, silk, is in each instance an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act, in that such practice is calculated to deceive the consuming public, and thereby to injure others who are engaged in selling a similar class of fabrics trader labels and advertisements which correctly designate their product and also to injure those engaged in selling genuine silk fabrics. *Held further,* That, respondents having taken step permanently to avoid all unfair competition in the matters complained of, and to avoid all probable

Upon investigation, and after informal conference with the respondents, it appeared that the goods labeled as "Palermo Silk" and "Mantua Silk" in fact contained only 28 and 23 per cent, respectively, of genuine, or cocoon, silk and 72 and 77 per cent, respectively, of other material, and that such manufacturer advertised and sold said fabrics generally, in interstate commerce, under such labels; and

C37Tl223aa025g.0259 Tf.0

Tj 2.04were TD 0.04D -0.0107 Tc 0.0407 Tw (unde5.uch labels; 98 () Tj 1.680 adT3 Tcntec 0 Tw (sold) Tj 16.68 0 TD 0

to avoid all unfair competition in the matters complained of, and to avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be in the interest of the public.

54. **Misbranding--Misleading labeling and advertising--Competitive method discontinued--**On application for the issuance of a complaint, it is alleged

ANNUAL REPORT OF THE FEDERAL TRADE
COMMISSION. 57

that selling agents labeled certain fabrics as "Savoy Washable Art Silks," which in fact were not genuine silk, and that such selling agents advertised and sold said fabrics under such labeling in interstate commerce.

Upon investigation and after informal conference with the respondents, it appeared that the goods labeled as "Savoy Washable Art Silks" in fact contained only 29 percent genuine or cocooa silk and 71 per cent of other material, and that such selling agents advertised and sold said fabrics generally in interstate commerce under such label; and

It appeared further that such practices in this industry have grown up gradually and partly

a) probable deception and injury to the consuming publi

“Silkine” crochet, and “Silkine” art thread, and that such manufacturer advertised and sold such threads under such labeling in interstate commerce.

Upon investigation, it appeared that no one of the threads labeled as “Sansilk,” “Silkateen,” “Silkateen” darning floss, “Silkine” crochet, and “Silkine” art thread in fact contained any genuine or cocoon silk, and that such manufacturer advertised and sold said threads generally in interstate commerce under such labels; and

It appeared further that such practice of using fanciful words, of which the letters s-i-l-k constituted a part, may have grown up (as alleged by respondent) as a result of the necessity of meeting competitively like practices by others; and

It appeared further that whatever possible confusion and deception resulted were without any specific intent on the part of the respondent; and

It appeared further that respondent voluntarily took steps promptly to correct every possible confusion and deception that might result from such practice; and

It appeared further that respondent has now permanently changed each of the labels complained of by placing the fanciful words within quotations and by adding thereto certain words in conspicuous lettering, as follows: From “Sansilk” to “Sansilk” mercerized crochet cotton; from “Silkateen” to “Silkateen” mercerized crochet cotton; from “Silkateen” darning floss to “Silkateen” mercerized cotton darning floss; from “Silkine” crochet to “Silkine” crochet cotton; from “Silkine” art thread to “Silkine” art thread mercerized cotton:

Held, That such practice of labeling, advertising, and selling in interstate commerce threads labeled as: “Sansilk,” “Silkateen,” “Silkateen” darning floss, “Silkine” crochet, and “Silkine” art thread without the use of qualifying terms which clearly indicated that such threads were not composed of silk, when in fact they contained no silk, is, even in the absence of specific intent, an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act: *Held further*, That respondent having promptly and voluntarily agreed and taken steps permanently to avoid all unfair competition in the matters complained of, and to avoid all further possible deception and injury to the trade and the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be in the interest of the public.

57. Use of similar corporate name--Competitive method discontinued--Public interest. -Upon application for the issuance of a complaint, it appeared that a corporation engaged in interstate commerce adopted in 1901 the corporate name “National Oil & Supply Company,” and that another corporation engaged in interstate commerce adopted in 1916 the identical name. It further appeared that, while located in different cities, these corporations were selling the same class of goods in the same markets, and the use of the identical corporate name was resulting in confusion and deception of the public. The Commission took up the subject matter of the application with the corporation last adopting the name “National Oil and Supply Company,” which voluntarily agreed to discontinue the use of the name and to adopt in lieu thereof the name “U. S. Oil and Supply Company”: *Held*, (1) The use by a corporation of a corporate name, consisting of a combination of several generic and descriptive words, in the identical form or combination previously adopted by another corporation, is, even in the absence of specific intent, an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act: *Held further*, That respondent having promptly and voluntarily agreed and taken steps permanently to avoid all unfair competition in the matters complained of, and to avoid all further possible deception and injury to the trade and the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be in the interest of the public.

EXHIBIT 5.

FEDERAL TRADE COMMISSION v. A. B. DICK CO.

UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission held at its
office in the city of Washington, D. C., the 25th day of May, A. D. 1917.

Present: William J. Harris (chairman), Joseph E. Davies, William B. Colver, J. Franklin Fort,
Commissioners.

Federal Trade

On the rotary mimeograph--

LICENSE RESTRICTION.

This machine is sold by the A. B. Dick Co. with the license restriction that it may be used only with the stencil paper, Ink, and other supplies made by A. B. Dick Co. Chicago, U.S.A.

On the rotary neostyle--

LICENSE AGREEMENT.

This machine is sold by the Neostyle Co. and purchased by the user, with the express understanding that it is licensed to be used only with stencil paper and ink (both of which are patents) made by the Neostyle Co., New York City.

(4) That with each of the various dealers who bought such stencil duplicating machines from respondents for resale the respondents have made, and the respondent A.B. Dick Co., of Illinois, is still making, agreements, a part of each of which is as follows as to the respective machines named therein:

As to mimeographs:

2. The right to use mimeographs purchased under the terms of this agreement is dependent upon the full performance of the conditions of the license restriction attached to each of said mimeographs.

3. The party of the second part covenants and agrees not to sell any of said mimeographs or mimeograph supplies outside of [here is inserted the territory]; nor to sell any supplies for use with mimeographs except those made by and procured from the party of the first part; nor to sell or otherwise dispose of any mimeograph supplies to any dealer or agent, but only to users of said mimeographs; nor to sell or otherwise dispose of any mimeograph or mimeograph supplies, either directly or indirectly, to any persons or concerns not entitled to purchase the same.

4. The party of the second part covenants and agrees * * * to pay for such mimeographs and supplies as hereinabove specified, and to report in detail monthly to the party of the first part as to the names and addresses of persons or concerns to whom such mimeographs have been sold, including the consecutive numbers by which the mimeographs are recorded.

As to the neostyle:

1. The right to use neostyles purchased under the terms of this agreement is dependent upon the full performance of the conditions of the license restrictions attached

2. The party of the second part covenants and agrees * * * to report in detail monthly to the party of the first part as to the names and addresses of persons or concerns to whom said rotary neostyles have been sold, including the consecutive numbers by which the rotary neostyles are recorded.

3. The party of the second part covenants and agrees not to sell any rotary neostyles or rotary neostyle supplies outside of [here is inserted the territory]; nor to sell any supplies for use with rotary neostyles except those made by and procured from the party of the first part; nor to sell or otherwise dispose of any of said rotary neostyle supplies to any Dealer but only to users of rotary neostyles; nor to sell or otherwise dispose of any rotary neostyles or rotary neostyle supplies, either directly or indirectly, to any person entitled to purchase the same.

(5) That from a time prior to October 15, 1914, until December, 1916, all of the respondents have, and since said last-mentioned date the respondent A. B. Dick Co., of Illinois, has alone continuously sold in interstate commerce their stencil duplicating papers, with restrictions or conditions inscribed thereon, substantially in one of the following forms, either-

This composite

covering the use of stencil paper, ink, and other supplies, and is so marked.

(7) That certain parts of certain of respondents' stencil duplicating machines and certain parts of their stencil papers were and are covered by letters patent.

(8) That the respondents' stencil duplicating machine supplies have been and are now being sold at a large profit and at prices substantially higher than the prices at which supplies of their competitors, of a character and quality satisfactory to users of mimeographs and neostyles, could have been and can at this time be purchased.

(9) That the conditions or restrictions imposed by the respondents in the sale of their stencil duplicating machines, or their plan of marketing such machines, herein found to be generally used by the respondents (a) have compelled and do compel purchasers and users of such machines to purchase stencil duplicating paper, stencil duplicating ink, and other stencil duplicating supplies exclusively from the respondents, and at prices substantially higher than prices at which supplies of competitors of these respondents, satisfactory to many of such purchasers and users, could have been and can now be purchased; (b) have prevented and do prevent competing manufacturers from selling their stencil duplicating paper, stencil duplicating ink, and other stencil duplicating supplies for use with stencil duplicating machines sold by respondents; and (c) have prevented and do prevent dealers from selling stencil duplicating paper, stencil duplicating ink, and other stencil duplicating supplies of competitors of

ANNUAL REPORT OF THE FEDERAL TRADE
COMMISSION. 61

these respondents, and, in particular, have prevented and do prevent dealers from selling such supplies of competitors of respondents for use with respondents' stencil duplicating machines.

(10) That the conditions or restrictions imposed by the respondents in the sale of their stencil paper and the plan of marketing such paper (a) have compelled and may compel purchasers or users of such paper to purchase their stencil duplicating machines, stencil ink, and other stencil duplicating machine supplies from ~~one~~ ^{the} ~~same~~ ^{same} source.

0x

0.019.2 0 1.824 0 4 0 TD 0.0398 46

Present: William J Harris, chairman; Joseph E. Davies, William B. Colver, John F. Fort,
Commissioners.

Federal Trade Commission v. A.B. Dick Co. of New Jersey, A.B. Dick Co. of Illinois, and the
Neostyle Co. Docket No. 4.

ORDER TO CEASE AND DESIST.

The above-entitled proceeding being at issue upon the complaint of the Commission and the
answer of the respondents, and the testimony having been

ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION.

reduced to writing and filed and the Commission on the date hereof having made and filed a report containing its findings as to the facts and its conclusion that the respondents have violated, and are now violating, section 3 of the act of Congress, approved October 15, 1914 entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which said report is hereby referred to and made a part hereof: Therefore

It is ordered, That the respondent, the A. B. Dick Co. of Illinois, its officers and agents, cease and desist from directly or indirectly making any sale or contract for sale in interstate commerce of its stencil duplicating machines or stencil paper on the condition, paperrespuTw (stencil machines)

cond7ore

c 0 Tc 0 0.0333 Tj 7.68 0 TD 0.1167 Tc 0.0333 3 Tw () Tj 21 -0.002 Tc 0sup4 Tw (or-mmed7or() Tj 2.64 0 10 Tw (c

Whereas a period of 90 days was given the A. B. Dick Co. in which to make such changes in
i t s m e t h o d
of doing business as to conform to the order; and

Whereas it is desirable that the Commission know what changes the said company makes in
i t s p l a n o f
marketing its machines and supplies as a result of this order: Now, therefore, be it

Resolved, That under the authority conferred on the Commission by paragraph (b) of section 6 of “An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,” approved September 26, 1914, the said A. B. Dick Co. of Illinois be, and the same is hereby, required within 30 days after such changes in the conduct of its business have been made to make a special report to the Federal Trade Commission fully setting forth the nature of such changes and setting forth in complete detail the plan or plans adopted for the future sale of such machines and supplies, together with any contracts, agreements, or understandings, by warranty or otherwise, proposed to be attached to the future sale or contract for sale by respondent of its machines and supplies, either for resale or use of such machines or supplies.

Adopted by the Commission.

[SEAL.]

(Signed)

LEONIDAS L. BRACKEN, *Secretary.*

EXHIBIT 6.

INSTRUCTIONS, RULES, AND FORMS CONCERNING PATENTS,
TRADE-MARKS, PRINTS, LABELS, AND COPYRIGHTS.

The act of Congress approved October 6, 1917, known as the "Trading with the enemy act," contains the following provisions concerning patents, trademarks, prints, labels, and copyrights:

SEC. 10. That nothing contained in this act shall be held to make unlawful any of the following acts:

(a) An enemy, or ally of enemy, may file and prosecute in the United State, "an application for letters patent, or for registration of trademark, print, label, or copyright, and may pay any fees therefor in accordance with and is required by the provisions of existing law and fees for attorneys or agents for filing and prosecuting such applications. Any such enemy, or ally of enemy, who is unable during war, or within six months thereafter, on months

enemy or ally of enemy owners of the letters patent, trade-mark, print, label, or copyright, or otherwise, against the licensee for infringement or for damages, royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (f) hereof.

(d) The licensee shall file with the President a full statement of the extent of the use and enjoyment of the license, and of the prices received in such form and at such stated periods (at least annually) as the President may prescribe; and the licensee shall pay at such times as many be required to the alien property custodian not to exceed five per centum of the gross sums received by the licensee from the sale of said inventions or use of the trademark, print, label, or copyrighted matter or, if the President shall so order, five per centum of the value of the use of such inventions, trademarks, prints, labels, or copyrighted matter to the licensee as established by the President; and sums so paid shall be deposited by said alien property custodian forthwith in the Treasury of the United States as a trust fund for the said licensee and for the owner of the said patent, trade-mark, print, label, or copyright registration as hereinafter provided, to be paid from the Treasury upon order of the court, as provided in subdivision (f) of this section, or upon the direction of the alien property custodian.

(e) Unless surrendered or terminated is provided in this act, any license, granted hereunder shall continue during the term fixed in the license or in the absence of any such limitation during the term of the patent, trademark, print, label, or copyright registration under which it is granted. Upon violation by the licensee of any of the provisions of this act, or of the conditions of the license, the President may, after due notice and hearing, cancel any license granted by him.

(f) The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the war and until the expiration of one year thereafter, file a bill in equity against the licensee in the district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyrighted matter: *Provided, however,* That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit: *Provided further,* That the licensee may make any and all defenses which would be available were no license granted.

the court, in case the licensee, prior to suit, shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable.

(g) Any enemy, or ally of enemy, may institute and prosecute suits in equity against any person other than a licensee under this act to enjoin infringement of letter patent, trade-mark, print label, and copyrights in the United States, owned or controlled by said enemy or ally of enemy in the same manner and to the extent that he would be entitled so to do if the United States was not at war: *Provided*, That no final judgment or decree shall be entered in favor of such enemy or ally of enemy by any court except after thirty days' notice to the alien property custodian. Such notice shall be in writing and shall be served in the same manner as civil process of Federal courts.

ANNUAL REPORT OF THE

with the alien property custodian as provided by law.

XIX. I hereby further vest in the said Federal Trade Commission the executive administration of the provisions of section 10 (d) of the trading-with-the-enemy act, the power and authority to prescribe the form of, and time and manner of filing statements of the extent of the use and enjoyment of the license and of the prices received and the times at which the licensee shall make payments to the alien property custodian, and the amounts of said payments, in accordance with the trading-with-the-enemy act.

XX. I further hereby vest in the Federal Trade Commission the power and authority, whenever in its opinion the publication of an invention or the granting of a patent may be detrimental to the public safety or defense or may assist the enemy, or endanger the successful prosecuting of the war, to order that the

invention be kept secret and the grant letters patent withheld until the end of the war.
XXI.

¹ In exceptional cases and for good cause shown, applications and other communications may be submitted in German, but only when accompanied by a verified English translation.

ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION.
67

within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is ~~such~~ a nation

If it is claimed that the patent or copyright is controlled by an, enemy or ally of an enemy, the nature and origin of the control should be plainly stated, whether by contract, agency, stock ownership, or otherwise.

(c) There shall be attached to the application a Patent Office copy of the patent and a certified abstract of title to it, or a specimen of the copyrighted article and a certified copy of the copyright entries and, in the case of a patent, of a certified copy of the petition and all powers of attorney in the file of the application.

(d) That licensing the applicant is for the public welfare. Specifically, that there is a demand for the patented or copyrighted article or the product of the patented process which is not being met.

(e) That the applicant is able to make or cause to be made the patented or copyrighted article or exercise the patented process. Specifically, that the applicant is technically and otherwise, equipped to undertake or procure the manufacture or operate the process and is in fact able to do so.

(f) That the applicant intends to do so in good faith.

(g) The application must be verified by the person applying for the license, and in the case of a corporation by an officer thereof acquainted with the facts recited.

Each application shall be accompanied with a remittance of one hundred dollars.

A suggested form of application is appended.

A separate application is required for each patent or copyright.

The application should be prepared in duplicate and, for convenience in filing, on good unglazed paper 8 inches by 10 ½ inches, directed to the Federal Trade Commission, Patent, Trade-mark, and Copyright Division, and may be transmitted by mail or delivered personally. Personal attendance at the outset is not necessary. If any hearings are desired, notice of them will be given.

In every case where practicable notice of applications for license will be given to the attorney of the patentee or copyright proprietor whose name appears in the file of the application in the Patent Office. or the office of the Register of Copyrights.

The burden of establishing affirmatively the facts upon which under the terms of the act, license may be granted is placed upon the applicant for license.

THE TERMS OF THE LICENSE.

The act provides and the Executive order vests in the Federal Trade Commission the duty of prescribing the conditions of the license.

The form of licenses proposed to be issued is appended.

Only nonexclusive licenses will be issued unless the public interest shall otherwise require.

DURATION OF LICENSE.

The

ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION.

69

LICENSES UNDER TRADE-MARKS, PRINTS AND LABELS OWNED OR CONTROLLED BY AN ENEMY OR ALLY OF AN ENEMY.

Licenses for the use, of trade-marks, prints, and labels will be granted only under exceptional circumstances. Applications for licenses under the following conditions will be entertained:

- (1) Where the alleged trademark is the name of a patented or copyrighted article and a license is granted under the patent or copyright.
- (2) Where the alleged trade-mark is the name of an article manufactured under an expired patent or copyright.

THE LICENSE FEE.

The act provides that the license fee shall not exceed \$100, and not exceeding 1 per cent of the sum deposited with the alien property custodian. This fund is an amount not to exceed (a) 5 per cent of the gross sums received by the licensee from the sale of the licensed subject matter, or (b) 5 per cent of the value of the use of the licensed subject matter as established by the Federal Trade Commission.

ACCOUNTING AND PAYMENT TO THE ALIEN PROPERTY CUSTODIAN.

The licensee shall file with the Federal Trade Commission, semiannually on January 1 and July 1 of each year and oftener if required, a full statement of the extent of the use and enjoyment of the license, and of the prices received from the sale or use of the subject matter of it, and ~~within~~

-8H4c12 0 TD 0 Tc 0.03 Tw () Tj 2.28 0 TD 0.0517 Tc 0 Twm0a n d
) Tj 2.28 0 Tw () Tj 2.28 0not(and) Tj4 0 TD 0.06lu 311-8H4c12 0 TD 00 Tc 0.03 Tw Tw (and) TgSo0-Ij D 08.56(subj

name is signed to the foregoing statement; that he is duly authorized to swear to such statement on behalf of such corporation; that he has read this statement and knows and understands its contents; and that it is true.

Subscribed and sworn to before me this _____ day of _____, 19__.

Notary Public.

If in the opinion of the Federal Trade Commission the licensee has failed to supply to the public the articles made under this license at reasonable prices; or if in the opinion of the Federal Trade Commissi

If in the opinion of the Federal Trade Commission the articles made under this license are of unsatisfactory quality (and the licensee shall furnish to the Federal Trade Commission in the manner prescribed by it and when and as often as required, samples and specimens for

Copyright No. _____, dated _____ to _____ for the (book, etc., as the case may be; see copyright act of March 4, 1909, sec. 5, for classification) entitled (Insert title of work).

The Federal Trade Commission, under the authority of and in conformity with the "Trading with the enemy act" and of the Executive order of October

12, 1917, hereby licenses _____ to exercise within the United States all the rights created by the copyright laws of the United States of America, being the act of March 4, 1909, as amended with respect to the subject matter of copyright to _____, No. _____, dated _____ for the (book, etc., as the case may be; see copyright act of March 4, 1909, sec. 5, for classification) entitled (insert title of work), a copy of which is annexed hereto, for the period of _____, unless sooner terminated.

The licensee, during the continuance of this license, shall pay to the alien property custodian, semiannually, within 30 days after the 1st day of January, and the 1st day of July, respectively, of each year, a royalty at the rate of ___ per cent of the gross sums received by the licensee front the sale of the copyright work so herein licensed (or ___ per cent of the value of the use thereof to the licensee as established by the Federal Trade Commission).

The licensee shall, during the continuance of this license, keep proper accounts and separate books containing full particulars of--

(a) All copies of said copyright work made or caused to be inside by the licensee under the said copyright and of the price or prices charged therefor;

(b) All items of cost incurred in the use of said copyright work and in the manufacture and sale of such copyright work; and

(c) All other matters and things which, in the opinion of the Federal Trade Commission, may be material for the purpose of showing the amounts from time to time payable by the licensee concerning such royalty and what is a fair and reasonable price to the public for such copyright work.

The licensee shall, within 10 days after each of the semiannual days aforesaid, deliver a sworn statement to the Federal Trade Commission in writing showing the aforesaid particulars.

The licensee shall the continuance of this license give all such information as the Federal Trade Commission may consider to be material for the purpose of ascertaining the amount of

without prejudice to and so as not in any manner to affect any liability hereunder on the part of the licensee which may then be subsisting or have accrued.

