

[CHAPTER 49]

AN ACT

To amend the Act creating the Federal Trade Commission, to define its powers and duties, and for other purposes.

March 21, 1938

[S. 1077]

[Public, No. 447]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, as amended (U. S. C., 1934 ed., title 15, sec. 41), is hereby amended by inserting before the period at the end of the third sentence thereof a colon and the following: "*Provided, however,* That upon the expiration of his term of office a Commissioner shall continue to serve until his successor shall have been appointed and shall have qualified."

SEC. 2. Section 4 of such Act, as amended (U. S. C., 1934 ed., title 15, sec. 44), is hereby amended to read as follows:

"SEC. 4. The words defined in this section shall have the following meaning when found in this Act, to wit:

"'Commerce' means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"'Corporation' shall be deemed to include any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members, and has shares of capital or capital stock or certificates of interest, and any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members.

"'Documentary evidence' includes all documents, papers, correspondence, books of account, and financial and corporate records.

"'Acts to regulate commerce' means the Act entitled 'An Act to regulate commerce', approved February 14,¹ 1887, and all Acts amendatory thereof and supplementary thereto and the Communications Act of 1934 and all Acts amendatory thereof and supplementary thereto.

"'Antitrust Acts' means the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890; also sections 73 to 77, inclusive, of an Act entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', approved August 27, 1894; also the Act entitled 'An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes"', approved February 12, 1913; and also the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914."

SEC. 3. Section 5 of such Act, as amended (U. S. C., 1934 ed., title 15, sec. 45), is hereby amended to read as follows:

"SEC. 5. (a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.

"The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the Acts to regulate commerce, and persons, partnerships,

Federal Trade Commission Act, amendments.

38 Stat. 717.
15 U. S. C. § 41.
Commissioners,
term of office.

Proviso.
Continuance until
successor qualifies.

38 Stat. 719.
15 U. S. C. § 44.

Definitions.

"Commerce."

"Corporation."

"Documentary evidence."

"Acts to regulate
commerce."
24 Stat. 379.
49 U. S. C., ch. 1;
Supp. III, ch. 1.
48 Stat. 1064.
47 U. S. C., ch. 5;
Supp. III, ch. 5.

"Antitrust Acts."

26 Stat. 209.
15 U. S. C. §§ 1-7.

28 Stat. 570.
15 U. S. C. §§ 8, 11.

37 Stat. 667.
15 U. S. C. §§ 8, 11.
38 Stat. 730.
15 U. S. C. §§ 12-27;
Supp. III, ch. 1.

Unfair methods of
competition.
38 Stat. 719.
15 U. S. C. § 45.
Unfair or deceptive
acts, etc., added.

Prevention by Com-
mission; exception.
Post, p. 1022.

¹ So in original.

42 Stat. 159, 169.
7 U. S. C. §§ 181-229;
Supp. III, ch. 9.

or corporations subject to the Packers and Stockyards Act, 1921, except as provided in section 406 (b) of said Act, from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

Service of complaint.

“(b) Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and 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, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said 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 or the act or practice 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 or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the transcript of the record in the proceeding has 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 as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require: *Provided, however,* That the said person, partnership, or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate circuit court of appeals of the United States, in the manner provided in subsection (c) of this section.

Notice of hearing.

Appearance of accused.

Intervention by other parties.

Testimony.

Report of findings.

Issuance of cease and desist order.

Modification, etc.

Reopening, altering, etc., of order.

Proviso.
Right of appeal.

Review by appropriate circuit court of appeals.

Transcript of record to be filed.

“(c) Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the circuit court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith served upon the Commission, and thereupon the Commission forthwith shall certify and file in the court a transcript

of the entire record in the proceeding, including all the evidence taken and the report and order of the Commission. Upon such filing of the petition and transcript the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code.

“(d) The jurisdiction of the circuit court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive.

“(e) 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 judgment of court to enforce the same shall in anywise relieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts.

“(f) Complaints, orders, and other processes of the Commission under this section may be served by anyone duly 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 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 residence or the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its residence or 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.

“(g) An order of the Commission to cease and desist shall become final—

“(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the Commission may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b); or

Jurisdiction.

Findings as to facts conclusive.

Court order.

Leave to adduce additional evidence.

Modification, etc., by Commission of findings as to fact.

Judgment and decree final; review by Supreme Court.

36 Stat. 1157.
28 U. S. C. § 347.

Exclusive jurisdiction of circuit court of appeals.

Proceedings given precedence.

Service of processes.

Verified return; proof of service.

Commission's order final.

Upon expiration of time for filing petition for review.

Upon expiration of time for filing petition for certiorari.

“(2) Upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed, or the petition for review dismissed by the circuit court of appeals, and no petition for certiorari has been duly filed; or

Upon denial of petition for certiorari.

“(3) Upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review dismissed by the circuit court of appeals; or

Supreme Court mandate affirming Commission's order, etc.

“(4) Upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Commission be affirmed or the petition for review dismissed.

Order modified or set aside by Supreme Court; when final.

“(h) If the Supreme Court directs that the order of the Commission be modified or set aside, the order of the Commission rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the Commission shall become final when so corrected.

By circuit court of appeals; when final.

“(i) If the order of the Commission is modified or set aside by the circuit court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered in accordance with the mandate of the circuit court of appeals shall become final on the expiration of thirty days from the time such order of the Commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the Commission shall become final when so corrected.

Rehearing.

“(j) If the Supreme Court orders a rehearing; or if the case is remanded by the circuit court of appeals to the Commission for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered upon such rehearing shall become final in the same manner as though no prior order of the Commission had been rendered.

“Mandate” defined.

“(k) As used in this section the term ‘mandate’, in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

Penalty for violation.

“(l) Any person, partnership, or corporation who violates an order of the Commission to cease and desist after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than \$5,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States.”

False advertising.

SEC. 4. Such Act is further amended by adding at the end thereof new sections to read as follows:

Dissemination, etc.

“SEC. 12. (a) It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement—

By U. S. mails, etc.

“(1) By United States mails, or in commerce by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of food, drugs, devices, or cosmetics; or

"(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce of food, drugs, devices, or cosmetics.

Inducing, by any means, the purchase in commerce of food, drugs, etc.

"(b) The dissemination or the causing to be disseminated of any false advertisement within the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice in commerce within the meaning of section 5.

Dissemination of false advertisement an unfair act, etc.
Ante, p. 111.

"SEC. 13. (a) Whenever the Commission has reason to believe—

"(1) that any person, partnership, or corporation is engaged in, or is about to engage in, the dissemination or the causing of the dissemination of any advertisement in violation of section 12, and

"(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 5, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5, would be to the interest of the public,

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States or in the United States court of any Territory, to enjoin the dissemination or the causing of the dissemination of such advertisement. Upon proper showing a temporary injunction or restraining order shall be granted without bond. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business.

Suit or injunction.

Venue.

"(b) Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals—

Newspapers, or other publications.

"(1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and

If restraining of dissemination delays delivery of issue.

"(2) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement,

Delay due to method by which publication usually conducted.

the court shall exclude such issue from the operation of the restraining order or injunction.

"SEC. 14. (a) Any person, partnership, or corporation who violates any provision of section 12 (a) shall, if the use of the commodity advertised may be injurious to health because of results from such use under the conditions prescribed in the advertisement thereof, or under such conditions as are customary or usual, or if such violation is with intent to defraud or mislead, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than six months, or by both such fine and imprisonment; except that if the conviction is for a violation committed after a first conviction of such person, partnership, or corporation, for any violation of such section, punishment shall be by a fine of not more than \$10,000 or by imprisonment for not more than one year, or by both such fine and imprisonment: *Provided*, That for the purposes of this section meats and meat food products duly inspected, marked, and labeled in accordance with rules and regulations issued under the Meat Inspection Act approved March 4, 1907, as amended, shall be conclusively presumed not injurious to health at the time the same leave official 'establishments.'

Commodities injurious to health.
Ante, p. 114.

Penalty.

Convictions for subsequent violations.

Provided.
Inspection, etc., under Meat Inspection Act of 1907.

34 Stat. 1260.
21 U. S. C. §§ 71-91.

Liability of advertising mediums.

"(b) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of advertising, except the manufacturer, packer, distributor, or seller of the commodity to which the false advertisement relates, shall be liable under this section by reason of the dissemination by him of any false advertisement, unless he has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States, who caused him to disseminate such advertisement. No advertising agency shall be liable under this section by reason of the causing by it of the dissemination of any false advertisement, unless it has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, or seller, residing in the United States, who caused it to cause the dissemination of such advertisement.

"SEC. 15. For the purposes of sections 12, 13, and 14—

Definitions for purposes of designated sections.
"False advertisement."

"(a) The term 'false advertisement' means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. No advertisement of a drug shall be deemed to be false if it is disseminated only to members of the medical profession, contains no false representation of a material fact, and includes, or is accompanied in each instance by truthful disclosure of, the formula showing quantitatively each ingredient of such drug.

"Food."

"(b) The term 'food' means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

"Drug."

"(c) The term 'drug' means (1) articles recognized in the official United States Pharmacopœia, official Homœopathic Pharmacopœia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.

"Device."

"(d) The term 'device' (except when used in subsection (a) of this section) means instruments, apparatus, and contrivances, including their parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.

"Cosmetic."

"(e) The term 'cosmetic' means (1) articles to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof intended for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such article; except that such term shall not include soap.

Enforcement provisions.

"SEC. 16. Whenever the Federal Trade Commission has reason to believe that any person, partnership, or corporation is liable to a penalty under section 14 or under subsection (1) of section 5, it shall certify the facts to the Attorney General, whose duty it shall be to

cause appropriate proceedings to be brought for the enforcement of the provisions of such section or subsection.

"SEC. 17. If any provision of this Act, or the application thereof to any person, partnership, corporation, or circumstance, is held invalid, the remainder of the Act and the application of such provision to any other person, partnership, corporation, or circumstance, shall not be affected thereby.

"SEC. 18. This Act may be cited as the 'Federal Trade Commission Act'."

SEC. 5. (a) In case of an order by the Federal Trade Commission to cease and desist, served on or before the date of the enactment of this Act, the sixty-day period referred to in section 5 (c) of the Federal Trade Commission Act, as amended by this Act, shall begin on the date of the enactment of this Act.

(b) Section 14 of the Federal Trade Commission Act, added to such Act by section 4 of this Act, shall take effect on the expiration of sixty days after the date of the enactment of this Act.

Approved, March 21, 1938.

[CHAPTER 50]

AN ACT

To amend the Act approved February 7, 1913, so as to remove restrictions as to the use of the Little Rock Confederate Cemetery, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Act of Congress approved February 7, 1913 (37 Stat. 663), be, and the same is hereby, amended to read as follows:

"That the Secretary of War is hereby authorized to accept a conveyance to the United States of the Confederate Cemetery in Little Rock, Arkansas, which adjoins the national cemetery at that place, and when so accepted the Government shall take care of and properly maintain and preserve the cemetery, its monument or monuments, headstones, and other marks of the graves, its walls, gates, and appurtenances, and preserve and keep a record, as far as reasonably practicable, of the names of those buried therein, with such history of each as can be obtained, and the said conveyance shall be such that it will permit the burial in said cemetery of all soldiers, sailors, or marines and all officers or men of the Coast Guard, dying in the service of the United States, or dying in a destitute condition after having been honorably discharged from the service, or who served, or hereafter shall have served, during any war in which the United States has been, or may hereafter be, engaged, and, with the consent of the Secretary of War, any citizen of the United States who served in the army or navy of any government at war with Germany or Austria during the World War and who died while in such service or after honorable discharge therefrom, as provided in Revised Statutes, 4878, amended by the Act of April 15, 1920 (41 Stat. 552; U. S. C., title 24, sec. 281), and the Act of June 13, 1935 (Public, Numbered 132, Seventy-fourth Congress), in addition to men who were in the military and naval service of the Confederate States of America: *Provided*, That the Secretary of War shall at all times leave sufficient space in said cemetery for the purpose of future burials of Confederate veterans: *Provided further*, That organized bodies of ex-Confederates or individuals shall have free and unrestricted entry to said cemetery for the purposes of burying worthy ex-Confederates, for decorating the graves, and for all other purposes which they have heretofore enjoyed, all under proper and reasonable regulations and restrictions made by the Secretary of War."

Approved, March 26, 1938.

Separability clause.

Short title.

Orders served on or before date of enactment of this act.

Effective date of designated section.

March 26, 1938

[S. 975]

[Public, No. 448]

Little Rock Confederate Cemetery, Ark.
37 Stat. 663.

Acceptance by the Government.

Maintenance, etc.

Burial therein.

R. S. § 4878.
41 Stat. 552; 49 Stat. 339.
24 U. S. C. § 281; Supp. III, § 281.

Provisos.
Space for future burials of Confederate veterans.
Privileges provided for, under regulations.