

**BUSINESS COMPETITION AND  
THE LAW; EVERYDAY TRADE  
CONDITIONS AFFECTED BY  
THE ANTI-TRUST LAWS**

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Business Competition and the Law; Everyday Trade Conditions Affected by the Anti-Trust Laws  
by Gilbert Holland Montague

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the Anti-Trust Laws

By

Gilbert Holland Montague

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The Knickerbocker Press  
1917

## PREFACE

THIS book deals wholly with practical questions. Professionally I have often threshed them out, in court with judges and against opposing counsel, in conferences with United States Attorneys and with the Federal Trade Commission, and in consultations with bewildered business men of various stations and degrees. No one realizes better than I what far-reaching consequences to economics, to sociology, to ethics, and to government these questions are bound to have. But this is not the book, nor have I now the leisure, to explore into these theoretical fields. To me these questions present themselves daily as spelling either success or failure for great merchandising organizations, for nation-wide sales campaigns, for carefully conceived and elaborately executed marketing plans, and for the network of hundreds of thousands of distributing channels that create national distribution among millions of consumers for scores of competing producers and manu-

facturers. It is the bearing of these questions upon the web and woof of everyday business—their significance to make or break the manufacturer or his competitor, and their consequences to large investments of capital and effort in these great organizations, campaigns, and plans for distribution—that supply the keynote of this book.

This, therefore, is a book for business men. Court decisions and legal proceedings comprise, indeed, its backbone; and lawyers and economic students will, I hope, find them all faithfully cited. But the articles that were the nucleus of these chapters were originally intended for business men; and in preparing these pages for the press, I have had in mind the same audience. Readers seeking exact references will find satisfaction, I trust, in the Bibliography and Authorities which I have appended.

The recent dates of these authorities, I might add, are not at all accidental. Business competition is a relatively new legal subject. Only recently has it been realized how comprehensively the Sherman Act has covered it. Meanwhile, before this was generally realized, the Sherman Act, in 1914, was supplemented by two other acts: the Clayton Act, which, besides prohibiting various

kinds of price discriminations and contractual arrangements, also increased to a degree still unappreciated the dangers to business men from the anti-trust laws; and the Federal Trade Commission Act, which vested the Commission not only with sweeping investigational powers and with authority to enforce the specific prohibitions just mentioned, but also charged the Commission with the duty of enforcing a general prohibition against all "unfair methods of competition" in interstate and in foreign commerce. So that, today, there converge on this subject, through Federal authority alone irrespective of any State anti-trust statutes, three anti-trust laws of sweeping application, supported by the entire resources of the Federal Trade Commission, the great powers of the Attorney-General, the Department of Justice, and the United States Attorneys in every judicial district in the country, and the vigorous and litigious inclinations of "aggrieved" individuals everywhere to whom three-fold damages with a counsel fee and relief from any debt arising out of any of these prohibited transactions may appear to be an object. The law of business competition, therefore, is really in its beginning. And if other phases of the Sherman Act afford



any criterion of judicial development, the law of business competition will prove, for a great many years to come, a constant school for humility to anyone who attempts now to dogmatize about it.

Acknowledgment is due to *Printers' Ink* for permission to use, as the nucleus of this book, a series of articles of mine which it published between September and December, 1915. Acknowledgment also is due to Mr. Roy W. Johnson, who materially assisted me in the preparation of those articles. Too frequently, I am aware, in the following pages, do unliterary style, colloquialism, business idiom and vernacular—not to say slang—betray the fact that this book has been written in moments that I have snatched from professional absorption in actual pressing problems of business competition and the law. Acknowledgment in advance, therefore, is due to all readers who may graciously forgive me these faults.

GILBERT HOLLAND MONTAGUE.

NEW YORK CITY.  
February, 1917.

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