

LINOLEUM WORKS (INC.).

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 96.—May 27, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of a floor covering composed of a felt paper base impregnated with asphaltum, painted on both sides and printed on the top surface with decorative designs, included in its corporate name the word "linoleum," called its product "linoleum," held out and advertised the same as linoleum, and sold the same in competition with genuine linoleum, such simulation of design and use of the word "linoleum" being intended to mislead and deceive, and resulting in misleading and deceiving purchasers:

- *Held*, That the simulation of name and design, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Ringwalt Linoleum Works, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, Ringwalt Linoleum Works (Inc.), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, having its principal factory, office, and place of business located at the city of New Brunswick in said State, now and for more than two years last past engaged in the manufacture and sale of a floor covering composed of a felt base impregnated with asphaltum with a paint backing and facing, among the several States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Ringwalt Linoleum Works (Inc.), in the conduct of its business, manufactures such floor coverings so sold by it, in its factory located at the city of New Brunswick, State of New Jersey, and purchases and enters into contracts of purchase for the necessary component materials needed therefor, in different States and Territories of the United States, causing the same to be transported to its factory where they are made into the finished product, sold and shipped to the purchasers thereof; that after such products are so manufactured, they are continuously moved to, from, and among other States and Territories of the United States, the District of Columbia, and foreign countries, and there is continuously and has been at all times hereinafter mentioned, a constant current of trade and commerce in the said products between and

among the various States and Territories of the United States and the District of Columbia, and especially to and through the city of New Brunswick, State of New Jersey, and therefrom to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That the respondent, Ringwalt Linoleum Works (Inc.), within the last year, with the purpose, intent, and effect of stifling and suppressing competition in interstate commerce in the sale of floor coverings, has advertised, held out, and sold its product to the public as linoleum, which simulation is designed and calculated to, and does, deceive and mislead the public and cause purchasers to believe that respondent's product is linoleum.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it has reason to believe that the above-named respondent, Ringwalt Linoleum Works (Inc.), had been and then was using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent having entered its appearance by its attorneys at law, Kenyon & Kenyon, and formal hearing having been held before an examiner of this Commission, testimony being introduced on behalf of the Commission, and the respondent declining to introduce any testimony in its defense, and the Commission being duly advised in the premises, now upon the pleadings and said testimony, the Commission makes its report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Ringwalt Linoleum Works (Inc.), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of

New Jersey, having its principal factory, office, and place of business located at the city of New Brunswick in said State, now and for more than two years last past engaged in the manufacture and sale of a floor covering composed of a felt paper base impregnated with asphaltum with a paint backing and facing, among the several States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Ringwalt Linoleum Works (Inc.), in the conduct of its business, manufactures such floor coverings so sold by it, in its factory located at the city of New Brunswick, State of New Jersey, and purchases and enters into contracts of purchase for the necessary component materials needed therefor, in different States and Territories of the United States, causing the same to be transported to its factory where they are made into the finished product, sold, and shipped to the purchasers thereof; that after such products are so manufactured, they are continuously moved to, from, and among other States and Territories of the United States, the District of Columbia, and foreign countries, and there is continuously and has been at all times hereinafter mentioned, a constant current of trade and commerce in the said products between and among the various States and Territories of the United States and the District of Columbia, and especially to and through the city of New Brunswick, State of New Jersey, and therefrom to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That the word "linoleum," both in technical and popular usage has a precise and exact meaning and is only properly used to describe a floor covering made essentially in accordance with the expired patents granted to one Frederick Walton in England on December 19, 1863, No. 3210, and in the United States on February 23, 1869, No. 87227, and composed of oxidized oil and gums intimately mixed with ground cork or wood flour, usually on a back of burlap or canvas, the surface thereof being frequently finished in decorative designs which are either printed thereon or result from different portions of the material being

dyed in various colors and placed in suitable arrangement upon the fabric back.

PAR. 5. That the respondent, under its corporate name, Ringwalt Linoleum Works (Inc.), is engaged in the manufacture and sale of a floor covering under the name "Ringwalt's Linoleum" which is not made at all in accordance with the expired patents of Frederick Walton, and is not composed of oxidized oil and gums intimately mixed with ground cork or wood flour on a back of burlap or canvas, but consists of a base of felt paper saturated with asphaltum and painted on both sides with one or more coats of paint and printed on the top surface with decorative designs similar to those with which linoleum is printed, and that the respondent manufactures no linoleum as hereinbefore described in paragraph 3 of these findings.

PAR. 5. That there are numerous other felt-paper base floor coverings made by different manufacturers essentially similar to the product of the respondent, described in paragraph 4 of these findings, and extensively sold and advertised in interstate commerce throughout the various States and Territories of the United States, under various trade names, and that none of said felt-paper base floor coverings is advertised or held out by its manufacturer as linoleum.

PAR. 6. That in appearance the said product of the respondent closely resembles the printed linoleum hereinbefore described in paragraph 3 of these findings, and the respondent for more than two years last past, with the effect of stifling and suppressing competition in interstate commerce in the sale of floor coverings, has held out, advertised and sold its product as linoleum, which simulation is designed and calculated to, and does, deceive and mislead the public and cause purchasers to believe that the said product of respondent is linoleum.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts is, under the circumstances set forth in the above findings as to the facts, an unfair method of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September

26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, Ringwalt Linoleum Works (Inc.), had been and then was using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent having entered its appearance by its attorneys at law, Kenyon & Kenyon, and formal hearing having been held before an examiner of this Commission, testimony being introduced on behalf of the Commission, and the respondent declining to introduce any testimony in its defense; and the Commission having made its report and findings as to the facts and conclusions upon the pleadings and said testimony and having concluded upon such findings as to the facts that the respondent has been guilty of an unfair method of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Ringwalt Linoleum Works (Inc.), cease and desist from advertising, holding out, and selling as linoleum the floor covering manufactured by it and heretofore advertised and sold by it under the trade name of "Ringwalt's Linoleum," and from using the word "linoleum" in any way to designate or describe any similar floor covering manufactured by it which is not made essentially in accordance with the expired patents of one Frederick Walton, and which is not composed of oxidized oil and gums intimately mixed with ground cork or wood flour; and it is

Further ordered, that until such time as the respondent may be engaged in the manufacture of floor covering made essentially in accordance with the expired patents of Frederick Walton and composed of oxidized oil and gums intimately mixed with ground cork or wood flour, the respondent