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

Docket 212.—September 25, 1919.

SYLLABUS.

Where a partnership engaged in selling window glass, with the result of misleading certain customers—

(*a*) habitually removed the "quality slips" indicating the grade of glass, sometimes placed by the manufacturer inside the containers or boxes, and changed the labeling or stenciling on the outside of such boxes to indicate higher and more expensive grades of glass than they contained;

(b) sometimes labeled or stenciled on the outside of the boxes a higher grade than they contained, to correspond with customers' orders, together with the name of a defunct glass manufacturing concern, but never, up to some two years ago, placed their own name on the boxes;

(c) habitually bought window glass of a certain, definite grade, and sold the same as and for a higher or better grade to customers who ordered and paid for such higher grade:

*Held*, That such mislabeling and such misrepresentation, under the circumstances set forth, constituted unfair methods 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 A. T. McClure, given name unknown to this Commission, Arthur W. McClure, and John R. McClure, doing business under the firm name and style of A. T. McClure Glass Co., hereinafter referred to as respondents, have been and are, 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 respondents are now and were at all times hereinafter mentioned, residents of the State of Pennsylvania, with their principal office, factory, and place of business located at the town of Reynoldsville, in said State, now and for more than two years last past engaged in the business of acting as jobbers in the sale of window glass generally in commerce throughout various 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, in the window-glass industry, all glass is sold by the manufacturer to the jobber in carload lots and is packed and shipped in boxes, and is graded, marked, and branded by the manufacturer as follows, to wit: AA for first quality, A for second, B for third, and C for fourth, or what is commonly known and called in the trade as "culls"; that the manufacturers of such glass pack the same in boxes in which are inclosed slips of paper known as "quality slips," which indicate the grade or quality of the glass contained in such boxes, and such boxes are branded, marked, or labeled with the various letters indicating the grade of the glass contained therein, and the jobber resells such glass to retailers at and for prices varying as to the grade of the glass, receiving prices for the highest grades that are higher than those received for the lower grades.

PAR. 3. That the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, for more than one year last past in the conduct of their business, with the intent, purpose, and effect of stifling and suppressing competition in the sale and distribution of window glass in interstate commerce, have purchased glass from manufacturers as aforesaid and have systematically and continuously opened such boxes in which said glass was contained and removed therefrom such quality slips and changed the brands or

marks upon such boxes, marking those containing lower grades of glass to read and indicate that their contents are composed of higher and better grades of glass, and have then sold such misbranded glass to their various customers at and for the prices obtained for the brands as shown and indicated on such changed boxes; that such practices are calculated and designed to, and do, defraud and deceive the trade and general public and mislead them into the belief that they are receiving from said respondents the quality or grade of glass for which they pay.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein and the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, copartners, doing business under the firm name and style of A. T. McClure Glass Co., having appeared and filed their answer, and the cause having been referred to a duly qualified examiner, before whom the testimony was introduced, and counsel for the Commission and the respondents having heretofore prepared and filed their respective briefs and waived any and all right to present oral argument in support of the same, and the Commission having considered such pleadings, testimony, and briefs, and being duly advised in the premises, now makes and enters this its report, stating its findings as to the facts and its conclusions.

### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, are now and for more than two years last past have been copartners doing business under the firm name and style of A. T. McClure Glass Co., having their residence, office, and principal place of business in the town of Reynoldsville, State of Pennsylvania, engaged in selling window glass generally in commerce throughout various States of the United States and Canada in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That these respondents at all times herein mentioned have carried on and conducted their business by buying window glass in carload lots from the manufacturers thereof, causing the same to be transported in and to their warehouse in said town of Reynoldsville, where it is unloaded and then sold and shipped in different quantities to dealers, and in the year 1918 these respondents sold glass to customers in 14 States of the United States and the Province of Ontario, Canada.

PAR. 3. That in the window-glass industry there are four grades of glass denoting quality or clearness, to wit: AA, or first; A, or second; B, or third, and C, or fourth; and the glass is bought and sold by the manufacturers, jobbers, and dealers upon the basis of these quality grades, and the prices obtained therefor vary according to the different grades, the higher grades bringing higher prices.

PAR. 4. That window glass is separated or assorted into the above-mentioned grades by the manufacturer and packed in wooden boxes, upon the outside of which is labeled, stenciled, or marked the manufacturer's name and the grade of glass contained therein. Some manufacturers also inclose inside the boxes pieces of paper termed "quality slips," upon which is printed the manufacturer's name and the grade in conformity with the labels on the outside of such boxes, and after the glass has been thus assorted and packed it is shipped or delivered to the purchasers thereof.

PAR. 5. That for more than two years last past the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, have made a practice of buying window glass of a certain, definite grade from manufacturers thereof and removing the quality slips from the inside of the boxes and changing and raising the labels on the outside of such boxes to read and indicate that a higher grade of glass was contained therein, and then selling and shipping or delivering the same to customers who ordered and paid for such higher grade.

PAR. 6. That for more than two years last past the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, have made a practice of buying window glass of a

certain, definite grade from manufacturers thereof and without opening the boxes or altering the contents thereof changing and raising the labels or stencils on the outside of such boxes to read and indicate that a higher grade of glass was contained therein and then selling and shipping or delivering the same to customers who ordered and paid for such higher grade.

PAR. 7. That for more than one year prior to the 1st day of June, 1918, the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, in the conduct of their business made a practice of buying window glass from the manufacturers thereof and selling the same to customers, packed in wooden boxes, upon the outside of which they marked, labeled, or stenciled the grade of glass called for by such customers' orders, together with the name of the Centerville Glass Co., a defunct glass-manufacturing concern, which had long since ceased to operate or do business, and at no time prior to said 1st day of June, 1918, did these respondents use a label, stencil, or mark bearing their own name or that of their company.

PAR. 8. That for more than two years last past the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, have made a practice of buying window glass of a certain, definite grade from manufacturers thereof and selling the same as and for that of a higher or better grade to customers who ordered and paid for such higher grade.

PAR. 9. That by various means and methods heretofore described and set forth in the above and foregoing paragraphs 5 to 8, inclusive, the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, in commerce aforesaid for more than two years last past, have caused certain of their customers to believe that they were receiving window glass of a certain, definite grade and price when in truth and in fact such glass was of a lower grade and price.

## CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 5, 6, 7, 8, 9, and each and all of them, are under the circumstances

therein set forth 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."

SUBSTITUTE ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, copartners, doing business under the firm name and style of A. T. McClure Glass Co., having appeared and filed their answer, and the cause having been referred to a duly qualified examiner, before whom the testimony was introduced, and counsel for the commission and the respondents having heretofore prepared and filed their respective briefs and waived any and all right to present oral argument in support of the same, and the Commission having considered such pleadings, testimony, and briefs, and the Commission having made and filed its report, containing its findings as to the facts and its conclusions that the respondents have violated 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 said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered*, That the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, of Reynoldsville, State of Pennsylvania, copartners, doing business under the firm name and style of A. T. McClure Glass Co., their representatives, agents, servants, and employees cease and desist from directly or indirectly—

(1) Buying window or other kinds of sheet glass of a certain definite grade from manufacturers thereof, and removing the quality slips from the inside of the boxes and changing the labels on the outside of such boxes to read and indicate a higher grade of glass contained therein, and then selling and shipping or delivering the same to customers who ordered and paid for such higher grade.

(2) Buying window or other kinds of sheet glass of a certain definite grade from manufacturers thereof, and without opening the boxes or altering the contents thereof changing the labels or stencils on the outside of such boxes to read and indicate that a higher grade of glass is contained therein, and then selling and shipping or delivering the same to customers who ordered and paid for such higher grade.

(3) In any manner falsely marking or labeling window or other kinds of sheet glass, or the box in which the same is sold or shipped, as to the grade, quality, size, thickness, or weight of the glass.

(4) Selling glass to customers packed in boxes upon the outside of which is marked, labeled, or stenciled any other than the true name of the manufacturer, jobber, or shipper thereof.

*And it is further ordered*, That said respondents, A. T. McClure, Arthur W. McClure, John R. McClure, copartners, doing business under the firm name and style of A. T. McClure Glass Co., shall within 30 days from date of service of this order file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

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## FEDERAL TRADE COMMISSION

*v.*

## WILLIAM H. BATCHELLER, GEORGE BATCHELLER, and AKRON TIRE CO., INC.