LER, and AKRON TIRE CO., INC.

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

Docket 253.—September 25, 1919.

SYLLABUS.

Where a corporation and two individuals owning the majority of the stock thereof—

(*a*) advertised automobile tires rebuilt or reconstructed from partially worn and discarded tires from which the name and brand or mark of the original maker had been obliterated, and a new name or brand stamped thereon according to the agency through which such

tires were offered for sale, with a tendency thereby to mislead the purchasing public into believing that such tires were new and manufactured in accordance with the processes generally employed by manufacturers of standard automobile tires;

(*b*) failed in their advertising matter clearly to disclose that the goods were rebuilt;

(*c*) sold such tires without advising purchasers that they were not new but were composed in part of used or reclaimed material; and

(*d*) advertised that if a tire failed to give 4,000 miles' service such tire would be replaced at half price, thereby tending to create the impression among users that the tires could reasonably be expected to give a service of 4,000 miles:

Held, That such sales, rebranding, and advertisements, 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 William H. Batcheller, George Batcheller, and Akron Tire Co., Inc., 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 respondent, Akron Tire Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business located at the city of Long Island City, in said State, with branch offices in other States of the United States; that William H. Batcheller and George Batcheller control a majority of the capital stock and are the dominant and controlling factors in the aforesaid corporation; that all of the said respondents are now and at all times hereinafter mentioned have been engaged in the business of selling automobile tires of the character and in the manner hereinafter mentioned in com-

petition with manufacturers and dealers in automobile tires among the several States and Territories of the United States, the District of Columbia, and foreign countries.

PAR. 2. That in the conduct of their business respondents purchase old and discarded automobile tires in various States and Territories of the United States and transport the same through other States and Territories of the United States in and to the city of Long Island City, State of New York, and their other branch offices located in various States where they are made and manufactured into a finished product and sold and shipped to purchasers thereof; that after such products are so remade and manufactured they are continuously moved to, from, and among other States of the United States, the Territories thereof, and the District of Columbia, and there is continually and has been at all times herein mentioned a constant current of trade and commerce in said products between and among the various States and Territories of the United States, the District of Columbia, and foreign countries, and more particularly from other States and Territories of the United States and the District of Columbia to and through the city of Long Island City in said State, and from there to and through other States of the United States and Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondents are now and for more than a year last past have been engaged in purchasing old and discarded automobile tires and causing them to be repaired and coated with a thin coating of rubber or composition of similar appearance for the purpose of enabling said tires to be offered to the public for sale in the manner hereinafter more specifically mentioned.

PAR. 4. That the respondents for more than one year last past, with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of automobile tires in interstate commerce, as aforesaid, secured old and discarded automobile tires of various makes and bearing various trade names or brands, and in the process of having said tires repaired by said coating of rubber or composition the name of the maker of such tire and the original mark or

brand is caused to be removed or concealed, and caused to be remarked or restamped with new names or brands, such new names or brands depending upon the medium through which the said tires are to be offered for sale; that the remarking or restamping of said new names or brands upon old and discarded or worn tires, as aforesaid, and advertising them under such new names is calculated and designed to and does mislead and deceive purchasers and prospective purchasers to believe that said tires offered for sale by respondents are new tires manufactured by or specially for respondents.

PAR. 5. That it is the common belief and impression among dealers and consumers of automobile tires and the purchasing public generally that automobile tires having the appearance of and sold as new and unused tires are manufactured from new and unused material and in accordance with the methods and processes employed generally by manufacturers of standard automobile tires, and not by the process as employed and used by respondents as described and set forth in paragraph 3 of this complaint; that for more than one year last past, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of automobile tires, the respondents circulated and caused to be circulated advertisements through various publications and through the mails to the trade, and among consumers generally, that respondents' automobile tires are new and have not been made over as set forth in paragraph 3, which advertisements have conveyed and do convey and are calculated and designed to convey the belief and impression that the said tires manufactured by the respondents are composed of new and unused material, and that the respondents have at all times herein mentioned concealed and wholly failed to disclose that the said tires so manufactured by respondents are in fact remade as described in paragraph 3.

PAR. 6. That for more than one year last past, with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of automobile tires in interstate commerce, respondents advertised that such tires were guaranteed to give service of 4,000 miles, and that if

said tires failed to give such service respondents would furnish another tire for one-half the price quoted for such tires, thus representing and thereby creating the belief and impression among users of tires generally that said tires were calculated and expected by respondents to give service of 4,000 miles; that each of the respondents well knew that said tires had been worn and discarded before being coated with the thin film of rubber or composition, as aforesaid, and that said representations that said tires will run 4,000 miles are false, misleading, and calculated and designed to mislead and deceive purchasers and prospective purchasers.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondents, William H. Batcheller, George Batcheller, and Akron Tire Co., Inc., have been for more than one year last past 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 respondents having entered their appearance by Margaret M. Burnet, their attorney, duly authorized and empowered to act in the premises, and having filed their answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts which has been heretofore filed in which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore the Federal

Trade Commission 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 Akron Tire Co., Inc., is a New York corporation with its principal place of business at Long Island City, in the State of New York, and that William H. Batcheller and George Batcheller own and control the majority of the capital stock in the said Akron Tire Co., Inc.; that the respondents are engaged in the business of purchasing discarded automobile tires, rebuilding same, and selling them in turn to automobile tire brokers in competition with other firms similarly engaged.

PAR. 2. That in the conduct of their business respondents purchase discarded automobile tires in various States of the United States and have same shipped to their factory at Long Island City, where the said tires are reconstructed and rebuilt and are then sold in turn to purchasers in various States of the United States.

PAR. 3. That the said tires sold and offered for sale by respondents are rebuilt and reconstructed tires, being built from partially used and discarded tires, and are constructed substantially as follows: The fabric to a great extent used in rebuilding the tires is what is known as Egyptian duck or sea island cotton taken from carefully selected partially worn standard make tires. The carcass of the tire is buffed, washed, and thoroughly cleaned. The fabric is reexamined, and worn parts are pulled out and subsequently replaced with fabric of the same quality as that originally used in the tires. It is then given several coats of high quality vulcanized cement and allowed to dry, and later a second coat is applied, after which a breaker strip is added and the tread stocks put on. To it is then added a final coat of sheet rubber and the tire is then cured in a large hydraulic mold, and the final touch is painting the tire on the inside with soapstone.

PAR. 4. That the automobile tires manufactured and sold by respondent as aforesaid have the appearance of being composed of new material and made in accordance with the

methods and processes employed generally by manufacturers of standard automobile tires, and that respondents prior to but not since January, 1917, circulated advertisements to the trade and among customers generally wherein it was not stated the said tires sold by respondents were rebuilt or reconstructed, and by such omissions the said advertisements as used had a tendency to create the impression among the purchasing public that respondent's tires were new and made in accordance with the methods employed generally by manufacturers of standard automobile tires. That since February, 1919, every tire rebuilt for the trade by the respondents have been marked with the word "Reconstructed," which word is cast in the pneumatic molds in which the remade tires are vulcanized, and which word, by the pressure of the process, is plainly and prominently indented in the refinished tires.

PAR. 5. That the aforesaid partially used and discarded automobile tires were of various makes and bore various trade-marks or brands, and that in the process of having said tires rebuilt the name of the maker of such tires and the original mark or brand was obliterated and in place there was stamped a new name or brand, depending upon the agency through which the said tires were offered for sale; that the restamping of the said tires with new names as aforesaid, without any qualifying words or explanation, tended to cause the purchasing public to believe the said tires were new tires, manufactured in accordance with the process employed generally by manufacturers of standard automobile tires.

PAR. 6. That a circular was distributed under the name of the Akron Tire Co., Inc., containing an advertisement representing substantially that if a tire failed to give service of 4,000 miles, such tire would be replaced at one-half the price paid; that some of the tires did give this service, and that those which did not were replaced for one-half the original purchase price, but that the advertisement tended to create the belief and impression among users of automobile tires that the said tires sold by respondents could be expected to give a service of 4,000 miles.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings, under the circumstances set forth, are 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondents, William H. Batcheller, George Batcheller, and Akron Tire Co., Inc., having entered their appearance by Margaret M. Burnet, their attorney, duly authorized and empowered to act in the premises, and having filed their answer and thereafter having made, executed, and filed an agreed statement of facts in which they stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating 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, their officers, agents, representatives, servants, and employees cease and desist from directly or indirectly—

(1) Making representations by verbal statements, or statements in advertising matter, or otherwise, which are calcu-

lated and designed to create the belief and impression among consumers of automobile tires that rebuilt and reconstructed tires, restamped with new names and brands, are new tires manufactured from new and unused material.

(2) Selling or offering for sale rebuilt and reconstructed automobile tires, unless it is plainly and prominently indicated on the said tire that it is reconstructed or rebuilt.

(3) Wording and phrasing advertisements so as to create the impression and belief that automobile tires sold and offered for sale by respondents can reasonably be expected to give a service of 4,000 miles.

FEDERAL TRADE COMMISSION

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