PLOMO SPECIALTY MANUFACTURING CO. AND RIVERSIDE REFINING CO.

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

Docket 448.—December 30, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of oils, turpentine, and kindred products—

(*a*) represented by means of advertisements and brands that a product sold by it, composed of turpentine adulterated with mineral oil, was "second-run" turpentine, the fact being that there is no product commercially known as "second-run" turpentine;

(*b*) represented by means of advertisements and brands that a product sold by it and composed of linseed oil, adulterated with mineral oil, was "second-run" linseed oil, the fact being that there is no such product as "second-run" linseed oil;

With the result of misleading purchasers into believing that the turpentine and linseed oil sold by it were pure products, notwithstanding the fact that it stated in its advertisements that said products were not pure, nor recommended for medicinal purposes:

Held, That such advertising, and such branding, 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 the Plomo Specialty Manufacturing Co. and Riverside Refining 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 this respect on information and belief, as follows:

PARAGRAPH 1. That the respondent, Plomo Specialty Manufacturing Co., is a corporation doing business under the laws of the State of Ohio, with its principal office and place of business located at the city of Cleveland, in said State; that the respondent, Riverside Refining Co., is a subsidiary of the said Plomo Specialty Manufacturing Co. and was organized and exists for the sole purpose of marketing and selling the oil, turpentine, and kindred products of the Plomo Specialty Manufacturing Co.; that the said respondents are now and at all times hereinafter mentioned have been engaged in the business of manufacturing, purchasing, selling, and reselling certain oils and turpentine and kindred products in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of their business the respondents purchase the component ingredients used in the

manufacture of said oils, turpentine, and kindred products in various States and Territories of the United States and transport the same through other States and Territories in and to the city of Cleveland, State of Ohio, where they are made and manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so 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 Cleveland, State of Ohio, and from there to and through other States of the United States, Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondents for more than a year last past, in the sale of their products as aforesaid in interstate commerce, have sold and are now selling and offering for sale certain of their products which are and have been adulterated and mixed with a low grade mineral oil and other ingredients, and have represented by means of advertisements and circulars and held out and stated to the purchasing public that the product so offered for sale was "second run" turpentine; that such statements and representations are false and misleading and calculated and designed to and do deceive the trade and the general public into believing respondents' products to be pure and unadulterated.

PAR. 4. That the respondents for more than a year last past, in the sale of oils, turpentine, and kindred products in interstate commerce, have sold and are now selling and offering for sale a so-called "second run" linseed oil, that in the trade there is no such commodity known as "second run" linseed oil, and that the oil sold by respondents as "second run" linseed oil is a mixture of low grade mineral

oils with pure linseed oil; that the representation and statement by respondent in its advertising matter that its linseed oil is "second run" is false and misleading and calculated and designed to and does deceive the trade and the general public into believing respondents' products to be pure and unadulterated.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondents, Plomo Specialty Manufacturing Co. and Riverside Refining Co., 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 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 from 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 respondent 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 conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Plomo Specialty Manufacturing Co., is an Ohio corporation, with its principal place of business in the city of Cleveland, in said State, and the Riverside Refining Co. is a corporate trade name adopted by the Plomo Specialty Manufacturing Co. as a medium for marketing oils, greases, and paints, and exists for the sole purpose of marketing and selling products of the Plomo Specialty Manufacturing Co.; that the said Plomo Specialty Manufacturing Co. is now and at all times hereinafter mentioned has been engaged in the business of manufacturing, purchasing, selling, and reselling certain oils, turpentine, and kindred products in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business the said respondent has through its own name and through its corporate trade name, Riverside Refining Co., purchased the component ingredients used in the manufacture of said oils and turpentine in various States of the United States and transported the same through other States to the city of Cleveland, State of Ohio, where they were manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among the other States of the United States, and there is continuously and has been at all times herein mentioned a constant current of trade in commerce of said products between and among the various States of the United States, the District of Columbia, and foreign countries.

PAR. 3. That respondent, through its selling medium, Riverside Refining Co., for more than a year last past in the sale of its products as aforesaid in interstate commerce, has represented by means of advertisements and brands, placed on containers, to the purchasing public that turpentine and linseed oil sold by it are "second run." That linseed oil is pressed from the flaxseed. That there is no such product as "second run" linseed oil. That the product called "second run" linseed oil by respondent is linseed oil adul-

terated with mineral oil. That respondent's so-called "second run" is composed of 45 per cent linseed oil, 10 per cent turpentine, and 45 per cent mineral oil. That the use of the term "second run" misleads the purchasing public into believing that linseed oil sold and advertised as "second run" is a pure product.

PAR. 4. That the respondent, through its selling medium, Riverside Refining Co., for more than a year last past represented by means of advertisements and brands to the purchasing public that the turpentine sold by it was "second run." That there is no such product commercially known as "second run" turpentine. That respondent's so-called "second run" turpentine is composed of 30 to 40 per cent turpentine and 60 to 70 per cent low-grade mineral oil. That the use of the term "second run" as applied to turpentine misleads the purchasing public into believing turpentine sold and advertised as "second run" is a pure product. And, further, the application of the term "second run" to a mixture which contains turpentine implies a product which has been obtained by a second running of pine trees from which commercial turpentine has previously been taken.

PAR. 5. That respondent, through its selling medium, Riverside Refining Co., has stated in its advertising matter that its so-called "second run" linseed oil and "second run" turpentine are not pure products and are not recommended for medicinal purposes, and respondent's salesmen are expressly instructed to so advise purchasers.

CONCLUSION.

That the method of competition set forth in the foregoing findings, under the circumstances is 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, and the respondent, Plomo Specialty Manufacturing Co. and Riverside Refining Co., having entered its appearance by Tolles, Hogsett, Ginn & Morley, its attorneys, duly authorized and empowered to act in the premises, and having filed his answer and thereafter having made, executed, and filed an agreed statement of facts in which it 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 conclusion that the respondent has 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 respondent, its agents, representatives, servants, employees, and its selling medium, Riverside Refining Co., cease and desist from directly or indirectly holding out and representing by means of advertisements and brands, that a mixture of turpentine and low grade mineral oil is "second run" turpentine, that a mixture of linseed oil and low grade mineral oil is "second run" linseed oil, or using or applying the term "second run" in any way whatsoever to adulterated turpentine and linseed oil which may tend to lead the purchasing public to believe such adulterated products to which the term "second run" is applied are pure and unadulterated.

FEDERAL TRADE COMMISSION