FEDERAL TRADE COMMISSION

v.

JAMES DUFFY, TRADING AS THE SANITARY TURPENTINE CO.

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

Docket 493.—February 5, 1920.

SYLLABUS.

Where a dealer in linseed oil, turpentine, and kindred products—

(*a*) advertised and sold linseed oil adulterated with mineral oil or other ingredients as "Linseed oil, raw or boiled," thereby misleading purchasers into believing that they were buying pure linseed oil;

(*b*) advertised and sold turpentine adulterated with mineral oil or other ingredients as "Turpentine," thereby misleading purchasers into believing that they were buying pure turpentine;

(*c*) advertised and sold turpentine adulterated with mineral oil and other ingredients as "Second-run turpentine," although there is no product commercially known as "Second-run turpentine," thereby misleading purchasers into believing that they were buying pure turpentine;

(*d*) advertised and sold a composition containing linseed oil, mineral oil, vegetable oil, and other ingredients, as "Sunflower Brand boiled oil"—the words "boiled oil" being generally understood in the paint trade to mean boiled pure linseed oil—and stated that such product was a competitor of linseed oil and actually boiled to 212° F.; the use of such designation misleading customers and competitors into believing the product was pure lineseed oil:

Held, That such false and misleading advertising, and branding, and such sales constituted, under the circumstances set forth, 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 James Duffy, trading as the Sanitary Turpentine Co., hereinafter referred to as the 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, upon information and belief as follows:

PARAGRAPH 1. That the respondent, James Duffy, trading under the name of the Sanitary Turpentine Co., for more than a year last past has been engaged in the sale of linseed oil, turpentine, and kindred products, and in the transportation of same from his place of business in the city of Chicago, in the State of Illinois, to purchasers thereof in other States of the United States, in direct competition with other individuals, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, during the past year in the conduct of his business of selling linseed oil, turpentine, and kindred products in interstate commerce as aforesaid, in circulars and other advertising matter distributed by him among the trade throughout the United States, has designated and described certain of the products sold by him

which have been mixed and adulterated with low-grade mineral oils as "Linseed oil, raw or boiled," "Sunflower Brand boiled oil," "Turpentine," and "Second-run turpentine," and that the effect of such designations and descriptions has been to mislead and deceive the trade and purchasing public into the belief that such products are composed wholly of linseed oil or turpentine.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondent, James Duffy, trading as the Sanitary Turpentine Co., has been and now 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 that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect; and the respondent, James Duffy, trading as the Sanitary Turpentine Co., having entered his appearance by Max P. Goodman, Esq., his attorney, duly authorized and empowered to act in the premises, and having filed his answer admitting that certain of the methods and things alleged in the said complaint are true in the manner and form therein set forth, and denying certain other allegations and counts contained therein; 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 and thereupon make and enter its report stating its findings as to the facts and its conclusions of law 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 respondent, James Duffy, is an individual trading under the name and style of Sanitary Turpentine Co., in the city of Chicago, in the State of Illinois, and is now and at all times hereinafter mentioned has been engaged in the purchase and sale of linseed oil and turpentine and kindred products and the manufacture and sale of compounded composites of linseed oil, turpentine, and other oils in interstate commerce throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, James Duffy, trading under the name and style of Sanitary Turpentine Co., in the conduct of his linseed-oil business, does not and has not at any time hereinafter mentioned manufactured linseed oil; but purchases pure linseed oil from various dealers in such oil wherever he can buy to the best advantage and transports said oil to his factory where it is adulterated, mixed, or compounded with mineral oils and other ingredients and sold to the public in interstate commerce.

PAR. 3. That the respondent, James Duffy, trading under the name and style of Sanitary Turpentine Co., in the conduct of his turpentine business, does not and has not, and has not at any time hereinafter mentioned, manufactured turpentine; but purchases pure turpentine from various dealers in such product, wherever he can buy to the best advantage, and transports said turpentine to his factory where it is adulterated, compounded, or mixed with mineral oil or other ingredients and sold to the public in interstate commerce.

PAR. 4. That for more than one year last past respondent, trading under the name and style of Sanitary Turpentine Co., in the conduct of his business, has published and circulated advertising matter among the trade throughout the United States, in which he offers for sale to the public certain products which he has designated and described as

"Linseed oil, raw or boiled," which said linseed oil is not pure linseed oil but is adulterated, mixed, or compounded with mineral oil or other ingredients, as aforesaid, and said term is calculated and designed to and does lead the customers and purchasers of such particular product of respondent to believe that they are being supplied with pure linseed oil.

PAR. 5. That for more than one year last past respondent, trading under the name and style of Sanitary Turpentine Co., in the conduct of his business, has published and circulated advertising matter among the trade throughout the United States, in which he offers for sale to the public a product which he designates as "Turpentine," which said turpentine is not pure turpentine, but is adulterated, mixed, or compounded with mineral oil or other ingredients, and said term is calculated and designed to and does lead the customers and purchasers of such product of respondent to believe that they are being supplied with pure turpentine.

PAR. 6. That for more than one year last past the respondent, trading under the name and style of Sanitary Turpentine Co., in the conduct of his business has published and circulated advertising matter among the trade throughout the United States in which he offers for sale a product which he designates "Second-run turpentine"; that there is no such product commercially known as "Second-run turpentine"; that respondent's so-called "Second-run turpentine" is composed of a certain percentage of turpentine and is adulterated, mixed, or compounded with mineral oil and other ingredients, as aforesaid, and that said term is calculated and designed to and does lead the customers and purchasers of such product of respondent to believe that they are being supplied with pure turpentine. And, further, the application of the term "Second-run turpentine" to a mixture which contains turpentine may be understood to imply that the product has been obtained by second running of pine trees from which commercial turpentine has been taken.

PAR. 7. That for more than one year last past the respondent, trading under the name and style of Sanitary Turpen-

tine Co., in the conduct of his business has purchased and circulated advertising matter among the trade throughout the United States in which he offers for sale to the public a product which he designates "Sunflower Brand boiled oil"; that in the paint trade the words "boiled oil" applied to a product are generally understood, in the absence of a specific designation otherwise, to mean that the said oil is pure linseed oil which has been boiled; that the said product of respondent is a carefully prepared composition containing from 50 to 65 per cent linseed oil and from 35 to 50 per cent mineral oil, vegetable oil, and other ingredients; that respondent in his advertising matter has stated that said brand is a competitor of and to linseed oil, and that said product is actually boiled to 212° F.; that the said designation "Sunflower Brand boiled oil" may and does mislead the customers and competitors of said respondent to believe that they are being supplied with pure linseed oil.

PAR. 8. That for more than one year last past the respondent, trading under the name and style of Sanitary Turpentine Co., has in the conduct of his business, as aforesaid, sold and offered for sale linseed oil which has been adulterated and mixed with mineral oil and other ingredients under the label or brand "Linseed oil, raw or boiled"; that for a like period in the conduct of his business, as aforesaid. respondent has sold and offered for sale turpentine which has been adulterated and mixed with mineral oil and other ingredients under the label or brand "Turpentine"; that for a like period in the conduct of his business, as aforesaid, respondent has sold and offered for sale turpentine which has been adulterated and mixed with mineral oil and other ingredients under the label or brand "Second-run turpentine"; that for a like period in the conduct of his business, as aforesaid, respondent has sold and offered for sale linseed oil which has been adulterated or mixed with mineral oil and other ingredients under the label or brand "Sunflower Brand boiled oil"; which said labels or brands do not notify, inform, or indicate to the purchasers thereof that the said linseed oil and turpentine has been adulterated or mixed or compounded as aforesaid.

PAR. 9. That the effect of the acts and practices in the manner and form above-mentioned and set forth may be to hinder, harass, and embarrass competitors of the respondent in the conduct of their business.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 4, 5, 6, 7, and 8, 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein and the respondent, James Duffy, trading as the Sanitary Turpentine Co., having entered his appearance by Max P. Goodman, Esq., his attorney, 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 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 to make and enter its report, stating its findings as to the facts and 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 respondent, James Duffy, trading as the Sanitary Turpentine Co., 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, James Duffy, trading as the Sanitary Turpentine Co., his agents, representatives, servants, and employees cease and desist from directly or indirectly—

(1) Selling or offering for sale linseed oil, turpentine, and kindred products which have been adulterated, mixed, or compounded with mineral oil or other ingredients without notifying or informing or indicating to purchasers thereof that the same are adulterated, compounded, or mixed, as aforesaid.

(2) From selling or offering for sale any compound or mixture of linseed oil or turpentine with cheaper oils or other ingredients as and for pure linseed oil or turpentine.

(3) Selling or offering for sale turpentine which has been adulterated, mixed, or compounded with mineral oil or other ingredients as "Second-run turpentine," without notifying, informing, or indicating to the purchasers thereof that the same is adulterated, compounded, or mixed, as aforesaid.

(4) Selling or offering for sale linseed oil which has been adulterated, mixed, or compounded with mineral oil or other ingredients as "Boiled oil," without notifying or informing or indicating to the purchasers thereof that the same is adulterated, compounded, or mixed, as aforesaid.

(5) From publishing or causing to be published or circulated throughout the various States of the United States, the Territories thereof, the District of Columbia, or foreign countries advertisements, circular letters, or other printed matter whatsoever wherein it is stated, set forth, or held out to the general public that the respondent is offering to sell linseed oil or turpentine, when the product so offered or advertised has been adulterated, mixed, or compounded with baser mineral oil or other ingredients, unless there is clearly, definitely, and distinctly stated or indicated or shown to the purchasers or prospective purchasers thereof the true character of the same

(6) From selling or offering for sale in any manner whatsoever linseed oil, turpentine, or kindred products which have been adulterated or which contain adulterated ingredients as and for pure products.

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And it is further ordered, That 60 days from the date of this order the respondent herein, James Duffy, trading as the Sanitary Turpentine Co., shall make a report to the Commission setting forth in detail the manner and form in which he has complied with the requirements of this order.

FEDERAL TRADE COMMISSION

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