FEDERAL TRADE COMMISSION

v.

CLARENCE L. COX, DOING BUSINESS UNDER THE TRADE NAMES AND STYLES OF OHIO STATE LINSEED CO. AND UNION LINSEED & TURPENTINE CO.

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

Docket 442.—February 25, 1920.

SYLLABUS.

Where an individual engaged in the manufacture and sale of both pure and adulterated linseed oil and turpentine, stated in circular letters and advertising matter that—

(*a*) the adulterated linseed oil and turpentine sold by him were equal to strictly pure linseed oil and turpentine for all painting and technical purposes;

(*b*) such adulterated products were used by some of the largest and most reliable concerns in the country with the best results;

(*c*) only a chemical analysis could disclose the difference between such adulterated products and strictly pure linseed oil and turpentine;

(*d*) such adulterated products were equal in every respect to a strictly pure material for anything but medicinal purposes, and were particularly adapted for all painting purposes, for inside or outside use; and that

(*e*) the Ohio State Pure Food and Drug Commission had held that all linseed oil and turpentine not suitable for medicinal purposes must be labeled "adulterated";

Whereas linseed oil or turpentine, when adulterated with cottonseed oil, or other vegetable oils or mineral oils which have no preserving, penetrating, or binding qualities, instead of penetrating the wood, binding the color pigment, and forming, through oxidation, a protecting and preserving film, either evaporate, leaving the pigment alone on the surface, where it becomes dust and scales off, or

prevents penetration and creates a hard outside film which cracks or peels; and the only ruling by the Ohio commission was to the effect that all adulterated products must be labeled as such:

Held, That such advertisements and statements, 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 Clarence L. Cox, doing business under the trade names and styles of Ohio State Linseed Co. and Union Linseed & Turpentine Co., has been and is using unfair methods of competition in interstate commerce in violation 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 with respect thereto 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, Clarence L. Cox, doing business under the trade names and styles of Ohio State Linseed Co. and Union Linseed & Turpentine Co., is a resident of the State of Ohio, with his principal office and place of business located in the city of Cleveland, now and for more than a year last past engaged in the business of manufacturing and selling linseed oil, turpentine, and kindred products in direct competition with other persons, firms, copartnerships, and corporations.

PAR. 2. That in the conduct of his business the respondent purchases the component ingredients used in the manufacture of linseed oil, turpentine, and kindred products in various States and Territories of the United States and transports the same through other States and Territories 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 has been

continuously 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 the States of the United States, the Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondent is now and for more than one year last past, with the effect of stifling and suppressing competition in the manufacture of pure and adulterated linseed oil, turpentine, and kindred products, has been selling adulterated linseed oil and adulterated turpentine by representing, holding out, and advertising by means of circulars and by other means that the Ohio State Pure Food and Drug Commission had held that all linseed oil and turpentine not suitable for medical purposes must be labeled "Adulterated," whereas the only ruling by said commission in this regard was to the effect that all "adulterated" products must be labeled as such; that the adulterated linseed oil and adulterated turpentine sold by him and offered to be sold by him are equal to strictly pure linseed oil and strictly pure turpentine for all painting and technical purposes; that such representations are false and are known by the respondent to be false and are misleading, and are calculated to and designed to and do deceive the trade and general public into believing that such adulterated linseed oil and adulterated turpentine sold and offered to be sold by the respondent are equal to strictly pure linseed oil and strictly pure turpentine.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Clarence L. Cox, doing business under the trade names and styles of Ohio State Linseed Co. and Union Linseed & Turpentine Co., hereinafter referred to as respondent, has 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 it appearing that a proceeding by it in respect thereto would be to the interest of the public; and having issued and served a complaint fully stating its charges in that respect; and the respondent having entered his appearance herein and having filed his answer to said complaint, in which answer respondent admitted that certain of the matters and things alleged in said complaint are true in the maner and form therein set forth, and denying others therein contained; and said respondent thereafter having entered into and executed an agreed statement of facts, which has been heretofore filed herein, in which it is stipulated and agreed that the Federal Trade Commission shall take such agreed statement of facts as evidence in support of the allegations contained in the complaint herein, and in lieu of testimony, and shall thereupon make its report herein, 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; the Federal Trade Commission, pursuant thereto, 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, Clarence L. Cox, does business under the trade names and styles of Ohio State Linseed Co. and Union Linseed & Turpentine Co., with principal place of business at Cleveland, Ohio, and is now and for more than two years last past has been engaged in the business of dealing in pure linseed oil and turpentine and manufacturing and dealing in adulterated linseed oil and turpentine, selling same among the States of the United States, and causing same to be transported, when sold, from the State of Ohio, through and into other States of the United States,

in direct competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That in the course of his said business as described in paragraph 1 hereof, respondent, for more than two years last past, has made use of circular letters and advertising matter which contained certain false and misleading statements of and concerning adulterated linseed oil and turpentine sold by him, which statements were to the effect that such adulterated linseed oil and turpentine were equal to the strictly pure linseed oil and turpentine for all painting and technical purposes; that such adulterated products were used by some of the largest and most reliable concerns in the country with the best of results; that only a chemical analysis could determine the difference between such adulterated products and strictly pure linseed oil and turpentine; that such adulterated products were equal in every respect to strictly pure material for anything other than medical purposes, and were particularly adapted for all painting purposes, for inside or outside use; that the Ohio State Pure Food and Drug Commission had held that all linseed oil and turpentine not suitable for medical purposes must be labeled "adulterated," whereas the only ruling by said commission in this regard, was to the effect that all adulterated products must be labeled as such.

PAR. 3. That linseed oil is used in paints and varnishes because it penetrates the wood, binds the color pigment, and forms, through oxidation, a protecting and preserving film; that turpentine is similarly used for its protecting and preserving properties. That if linseed oil or turpentine be adulterated with cottonseed oil, or other vegetable oil or mineral oils, which have no preserving, penetrating, or binding qualities they either evaporate, leaving the pigment alone on the surface where it becomes dust, or scales off, or prevents penetration and creates a hard outside film which cracks or peels.

CONCLUSIONS.

That the practices of respondent, as set out in the foregoing findings as to facts, under the circumstances stated, 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 respondent, Clarence L. Cox, doing business under the trade names and styles of Ohio State Linseed Co. and Union Linseed & Turpentine Co., having entered his appearance herein, and having filed his answer admitting that certain of the matters and things alleged and contained in the said complaint are true in the manner and form therein set forth; and thereafter having entered into and executed an agreed statement of facts, in which he stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as evidence in support of the allegations contained in the complaint herein and in lieu of testimony, and proceed forthwith upon the same to make and enter its report stating its findings as to facts, its conclusions and order, without the introduction of testimony, waiving any and all right to the introduction of testimony or the presentation of argument; and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusions 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, his agents, representatives, servants, and employees cease and desist from stating or representing in circular letters and advertising matter used by him to solicit business in the sale of adulterated linseed oil and adulterated turpentine; that such adulterated products are equal to strictly pure linseed oil and turpenine for all painting and technical purposes and for all purposes other than medical purposes; that only a chemical analysis could determine the difference between such adulterated

products and strictly pure products; that the Ohio State Pure Food and Drug Commission had held that all linseed oil and turpentine not suitable for medical purposes must be labeled "adulterated," and any other statement or representation of the same general import.

It is further ordered, That the respondent make and file with the Commission, on or before June 1, 1920, his report stating in detail the manner and form in which this order has been conformed to, and attach to said report copies of all circular letters and advertising matter used by him subsequent to the date of this order.

FEDERAL TRADE COMMISSION