

Complaint.

S F. T. C.

FEDERAL TRADE COMMISSION

LEWIS PELSTRING.

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

Docket 600.—September 9, 1920.

SYLLABUS.

Where an individual under the names of "Government Supply House" and "Pelstring's Government Supply House" falsely and deceptively advertised and offered for sale various paints and varnishes as "Government supplies," "War supplies," "Government spar varnish," and "Government structural paint, boxed for overseas shipment," the fact being that such paints and varnishes had never belonged to the Government or any department thereof, and that at the time of said advertisements he had in stock no paint, varnish, or war or other supplies of any kind with which the Government had been in any way connected:

Held, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Lewis Pelstring, hereinafter referred to as 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, on information and belief, as follows:

PARAGRAPH 1. That the respondent, Lewis Pelstring, is a resident of the State of Pennsylvania, having his principal office and place of business located in Philadelphia, in said State, and has been for more than one year last past and now is engaged in the business of selling paints, varnishes, and kindred products throughout various States of the United States, and at all times hereinafter mentioned has carried on said business in direct competition with other persons, firms, co-partnerships, and corporations similarly engaged.

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Findings.

PAR. 2. That the respondent in the course of his said business has, within one year last past, caused to be inserted in various newspapers circulated in and among the several States of the United States various advertisements in which he has, under the names of "Government Supply House" and "Pelstring's Government Supply House" offered for sale various paints and varnishes designated by him as "Government supplies," "War supplies," "Government spar varnish," "Government structural paint, boxed for overseas shipment," when in fact said paints and varnishes had been bought by respondent from other dealers in the ordinary course of business, and had never belonged to the United States Government, or any department thereof.

PAR. 3. That, among others, three advertisements were printed on November 23, 1919, December 7, 1919, and December 28, 1919, respectively, in the "For sale" columns of the Philadelphia North American, a daily newspaper published in the city of Philadelphia, State of Pennsylvania, and having a large circulation throughout said State and the adjoining States.

PAR. 4. That at said times respondent did not have in stock any Government paint or varnish, or Government or war supplies of any kind, or any supplies which had been manufactured for the Government or boxed for overseas shipment, as stated in said advertisements, or any goods with which the United States Government had been in any way connected, of all of which facts respondent had full knowledge at the time of the publication of said advertisements.

PAR. 5. That by reason of the facts set out in the foregoing paragraphs of this complaint the respondent has been guilty of unfair methods of competition in commerce as defined and prohibited by 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Lewis Pelstring, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed his answer, wherein he admits that the matters and things alleged in said complaint are true in the manner and form alleged, and wherein respondent stipulates and agrees that the Commission shall take said answer as the evidence in this case and in lieu of testimony, and shall forthwith and there-

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upon make and enter its report, stating its findings as to the facts and its conclusion, and its order to cease and desist from the methods of competition complained of, disposing of this proceeding without the introduction of testimony or presentation of argument, and the Commission having duly considered the record and being fully advised in the premises, now makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Lewis Pelstring, is a resident of the State of Pennsylvania, having his principal office and place of business located in Philadelphia, in said State, and has been for more than one year last past, and now is, engaged in the business of selling paints, varnishes, and kindred products throughout various States of the United States, and at all times hereinafter mentioned has carried on said business in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That respondent in the course of his said business has within one year last past caused to be inserted in various newspapers circulated in and among the several States of the United States various advertisements in which he has, under the names of "Government Supply House" and "Pelstring's Government Supply House," offered for sale various paints and varnishes designated by him as "Government supplies," "War supplies," "Government spar varnish," "Government structural paint, boxed for overseas shipment," when in fact said paints and varnishes had been bought by respondent from other dealers in the ordinary course of business, and had never belonged to the United States Government or any department thereof.

PAR. 3. That, among others, three such advertisements were printed on November 23, 1919, December 7, 1919, and December 28, 1919, respectively, in the "For sale" columns of the Philadelphia North American, a daily newspaper published in the city of Philadelphia, State of Pennsylvania, and having a large circulation throughout the said State and the adjoining States.

PAR. 4. That at said times respondent did not have in stock any Government paint or varnish, or Government or war supplies of any kind, or any supplies which had been manufactured for the Government or boxed for overseas shipment, as stated in said advertisements, or any goods with which the United States Government had been in any way connected, of all of which facts respondent had full knowledge at the time of the publication of said advertisements.

PAR. 5. That the said advertisements are false and deceptive and misleading to the purchasing public.

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Order.

CONCLUSION.

The practices of said respondent, under the conditions and circumstances described in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce and constitute a violation of section 5 of the 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.

This proceeding having been heard by the Federal Trade Commission, the complaint of the Commission, and answer of the respondent admitting that the matters and things alleged in said complaint are true in the manner and form alleged, and agreeing that the Commission shall take said answer as evidence in this case in lieu of testimony and dispose of this proceeding without the introduction of testimony or the presentation of argument, and the Commission having made and filed its findings as to the facts and its conclusion that respondent has violated 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":

It is now ordered, That the respondent, Lewis Pelstring, his agents, representatives, servants, and employees, do cease and desist from publishing or causing to be published advertisements under or in connection with such names as "Government Supply House" and "Pelstring's Government Supply House," or any other names, offering for sale paints, varnishes, or kindred products under or in connection with such designations as "Government supplies," "War supplies," "Government spar varnish," "Government structural paint, boxed for overseas shipment," or under any other designation similar thereto, when said paints or varnishes have never belonged to the United States Government or to any department thereof.

It is further ordered, That the respondent, Lewis Pelstring, shall, within 60 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

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FEDERAL TRADE COMMISSION

v.

COMMONWEALTH COMPANY.