

FEDERAL TRADE COMMISSION

v.

SAMUEL WEINBERG, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF THE INTERNATIONAL FLAXOL CO.

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

Docket 597.—September 17, 1920.

SYLLABUS.

Where an individual engaged in the preparation and sale of an oil which he called Flaxol, for use in the preparation of paint, advertised the same to be "Oil," "Raw oil," "Boiled oil," "Improved linseed oil," stating in such advertisements that "Users tell us it is really better than just linseed oil," a "new-process oil made especially for the paint trade," and "A pure linseed oil equivalent used for paint-making purposes"; the fact being that Flaxol was not the equivalent of flax or linseed oil, and the natural and probable tendency of such advertisements being to mislead the public and to induce the purchase thereof as and for flax oil or linseed oil;

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 Samuel Weinberg, doing business under the trade name and style of the International Flaxol Co., hereinafter referred to as respondent, is now and for more than a year last past has been 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. The respondent, Samuel Weinberg, as the International Flaxol Co., for more than one year last past has sold and transported, and now sells and transports, from Boston, in the State of Massachusetts, to purchasers thereof throughout the United States

a certain product, which respondent has named and advertises as Flaxol, thereby indicating that it is a product or derivative of flax and the equivalent of linseed oil, the well-known product of flax, sometimes called flaxseed oil, in competition with persons, partnerships, and corporations engaged in the sale of linseed oil.

PAR. 2. Flaxol contains only a small and immaterial amount of linseed oil, is not a product or derivative of flax or the equivalent of linseed oil, and the natural and probable tendency of the advertisement of said commodity as Flaxol is to mislead the public to believe that Flaxol is produced from flax and induce its purchase as and for linseed oil.

PAR. 3. The said conduct of respondent in so advertising and selling Flaxol is an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act.

PAR. 4. 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, Samuel Weinberg, doing business under the trade name and style of International Flaxol Co., 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 herein, in his own proper person, a hearing was had and evidence was thereupon introduced in support of the allegations of said complaint, the respondent appearing in his own proper person before an examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing, the respondent having waived oral argument and the presentation of a brief, and the Commission, having considered the brief of its counsel and duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Samuel Weinberg, the respondent herein, is now conducting business at No. 61-63 Wareham Street, Boston, Mass.,

Order.

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under the trade name and style of International Flaxol Co. Prior to the inauguration of his present business under said trade name he was the general manager of the Flaxol Co., at the same address in said city of Boston. Respondent's principal business is the preparation and sale of an oil to be used by painters in the preparation of paint, which respondent calls Flaxol. During the times mentioned in the complaint herein the respondent advertised and sold in commerce Flaxol to take the place of linseed oil or flax oil. For three or four months during the spring of 1919 the respondent maintained an office at No. 101 Beekman Street in the city and State of New York, but does not now maintain an office in New York. Respondent is engaged in interstate commerce.

PAR. 2. During the times mentioned in the complaint herein the respondent has in divers ways advertised his said product called Flaxol to be "Raw oil," "Boiled oil," "Improved linseed oil," and "Flaxol is oil." Respondent has during the times hereinabove mentioned informed the purchasing public and the trade generally by various advertising mediums that his product is an "Improved linseed oil," because "users tell us it is really better than just linseed oil," that "Flaxol is a new-process oil made specially for the paint trade"; and that "Flaxol is pure linseed oil equivalent, used for paint-mixing purposes."

PAR. 3. Linseed oil is made from flaxseed and is known as flax oil as well as linseed oil. Linseed oil is used largely for mixture of paints. Flaxol, the product manufactured and sold in commerce by the respondent, is not the equivalent of flax oil, which is also called linseed oil, and the natural and probable tendency of the advertisements of said commodity as Flaxol is to mislead the public and to induce its purchase as and for flax oil or linseed oil.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation 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 upon complaint of the Commission, the answer of the respondent, the testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts with its conclu-

sion that the respondent has violated the provisions 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";

It is now ordered, That the respondent, Samuel Weinberg, doing business under the trade name and style of International Flaxol Co., cease and desist from advertising and offering for sale under the name "Flaxol" the preparation heretofore sold by him under that name; and to cease and desist from using the term "Flaxol" as descriptive of any preparation which is not in fact a fair substitute for flax oil (usually called linseed oil).

It is further ordered, That the said Samuel Weinberg, within 30 days after the service upon him of this order, file with the Federal Trade Commission a written report of the manner in which he has complied with the terms of this order.

Complaint.

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FEDERAL TRADE COMMISSION

v.

LUBRIC OIL COMPANY.