

Complaint.

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FEDERAL TRADE COMMISSION

v.

A. E. LIND, DOING BUSINESS UNDER THE ASSUMED
NAME AND STYLE OF UNITED STATES SALVAGE CO.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 593—November 29, 1920.

SYLLABUS.

Where an individual dealing in paints,

- (a) Under the name of "United States Salvage Co," falsely and deceptively advertised his paints as "Army and Navy Brand," "Army and Navy paints, 100% pure * * *"; the Government wants you to paint"; and
- (b) Under the name of "Army and Navy Paint Co." falsely and deceptively advertised his paints as "Our brand of Army and Navy paint";

With a tendency to deceive and mislead the public into the belief that the paints so offered had been made for the Government according to its specifications and purchased by him as surplus stock:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that A. E. Lind, doing business under the assumed name and style of United States Salvage Co., 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, A. E. Lind, under the assumed name and style of United States Salvage Co., is now and for more than one year last past has been engaged in the business of buying and selling paints, varnishes, roofing cement, and kindred products throughout the several States and Territories of the United States, with his principal office and place of business in the city of Cleveland, State of Ohio, and during all times herein mentioned has been

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and is in direct competition with other persons, firms, copartnerships, and corporations, similarly engaged.

PAR. 2. That during the year 1919 the respondent selected the name "United States Salvage Co." as one under which to transact his said business, and that he has ever since conducted his said business under said assumed name of "United States Salvage Co."; that in carrying on his said business the respondent, under said assumed name and style of United States Salvage Co., has caused to be inserted in various newspapers, magazines, pamphlets, and periodicals published and circulated in and among the several States and Territories of the United States and the District of Columbia the following advertisement, to wit:

Sale of ARMY AND NAVY PAINTS.

\$2 per gallon.

Suitable for house painting.

30 gallons allotted to each person.

2,000 gallons battleship gray.

1,500 gallons camouflage green.

500 gallons camouflage yellow.

800 gallons brown.

500 gallons olive drab.

300 gallons cream.

400 gallons camouflage blue.

600 gallons aeroplane varnish.

750 gallons submarine black.

\$1.50 per gallon.

1,200 gallons roofing cement. Keeps your roof from leaking, \$1 per gallon.

The above paints are 100 per cent pure and the Government wants you to paint and now is your chance. This sale is for cash, 20 per cent to accompany order, balance C. O. D., subject to prior sale; f. o. b. Cleveland, Ohio.

UNITED STATES SALVAGE CO.

2837 Carnegie Ave., Cleveland, Ohio.

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That the respondent did not and does not sell or have for sale any paint, varnish, roofing cement, or like product manufactured for the use of the United States Government or sold by the United States Government to respondent as surplus stock.

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, A. E. Lind, doing business under the assumed name and style of "United States Salvage Co.," charging

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him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent, having entered his appearance in person, and filed his answer herein, a hearing was had before Frank B. Lent, an examiner of the Federal Trade Commission, theretofore duly appointed, at which hearing respondent appeared in person, and by J. B. Waterworth, Esq., his attorney, and agreed to execute, and did execute and file herein an agreed statement of facts, the same to be in lieu of testimony and to be taken as the evidence in this cause.

And thereupon, the respondent, having by such agreed statement of facts waived all argument before the Commission, and the privilege of filing a written brief herein, and having agreed that the Commission should forthwith and thereupon enter its report stating its findings as to the facts and its conclusion, and make its order disposing of this proceeding, and the Commission having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. A. E. Lind, the above-named respondent, commenced the business of buying and selling paints in the city of Cleveland, Ohio, on or about September, 1919. On or about the said time he made an agreement with the Postal Paint & Color Co., of said city, whereby said company would furnish him paints as ordered and send them to the purchasers in various parts of the United States for him, the said Lind. The said Lind, on or about the same time, adopted as his business name the name "United States Salvage Co.," which name he used continuously until about January, 1920.

PAR. 2. Under said name, "United States Salvage Co.," said Lind caused to be inserted in divers newspapers in certain of the States of the United States, and particularly in the States of Indiana, West Virginia, Ohio, and Virginia, advertisements, each of which was in words and figures as follows:

Sale of ARMY and NAVY PAINTS.

\$2 per gallon.

Suitable for house painting.

30 gallons allotted to each person.

2,000 gallons battleship grey.

1,500 gallons camouflage green.

500 gallons camouflage yellow.

800 gallons brown.

500 gallons olive drab.

300 gallons cream.

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400 gallons camouflage blue.
600 gallons aeroplane varnish.
750 gallons submarine black.
\$1.50 per gallon.

1,200 gallons roofing cement. Keeps your roof from leaking; \$1.00 per gallon.

The above paints are 100 per cent pure and the Government want you to paint, and now is your chance. This sale is for cash, 20 per cent to accompany any order, balance C. O. D., subject to prior sale; f. o. b. Cleveland, Ohio.

UNITED STATES SALVAGE CO.,

2837 Carnegie Ave., Cleveland, Ohio.

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Said advertisements were placed in the said newspapers at the instance of the said respondent on or about the month of September, 1919. Said respondent realized shortly after the advertisements appeared that the same were misleading, and gave orders to the newspapers publishing the same to discontinue such publication. Nevertheless, said advertisements appeared in said newspapers at least once in every instance and in the case of some newspapers several times.

PAR. 3. Said respondent received divers orders for such paint in answer to the said advertisements from persons residing in certain of the States of the United States, and particularly in the States of Indiana, West Virginia, Virginia, and Ohio; and during said period, to wit, between September, 1919, and January, 1920, the said Lind, under the said name of "United States Salvage Co.," sold and delivered to the several parties aforesaid in the said several States of the United States approximately 2,500 gallons of such paint so advertised, all of said paint being sold to the said purchasers by reason of and in response to the advertisements aforesaid.

PAR. 4. Said paint so advertised and sold during the said period as aforesaid, was not manufactured by the respondent, or by any other person or parties, for the United States Government, or the United States Army or Navy; nor was such paint sold by the United States Government, or the United States Army or Navy, to the respondent, or to any other person or party, as surplus Government stock or otherwise. Said advertisements were misleading and tended to deceive and mislead the public into the belief that the paint so offered for sale was surplus Government paint, made for the use of the United States Government and according to its specifications, duly purchased from the United States Government by the respondent, whereas said paint had never been manufactured for the use of the United States Army or the United States Navy.

PAR. 5. Respondent in response to every order received by him for such paint in response to said advertisements, sent to the prospective

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purchaser an acknowledgment blank, which contained the following heading:

UNITED STATES SALVAGE Co.,
2837 Carnegie Avenue, Cleveland, Ohio.
DISTRIBUTORS of ARMY PAINTS, SHIPBUILDING PAINTS, NAVY
PAINTS, Cantonment Roofing Cement.

Said blank contains the following notice:

DEAR SIR: We acknowledge receipt of your order for our brand of "Army and Navy" paint, and before shipping same beg to advise that our advertisement was not explicit.

We want you to know that this paint is only put up in barrels, half barrels, and wood kits, also that this is our special brand sold with the understanding that you have 10 days for examination or money refunded on return of goods if not satisfactory.

Please sign this acknowledgment and return and your goods will go forward at once.

UNITED STATES SALVAGE Co.,
2837 Carnegie Avenue, Cleveland, Ohio.

Name-----

Town-----

State-----

Respondent used said acknowledgment blank because he realized that the said advertisements were misleading and improper, and several of the prospective purchasers returned such acknowledgment blanks with request that their orders be canceled and their money refunded, and respondent did refund such money when so requested.

PAR. 6. Said respondent during the period between September, 1919, and January, 1920, sent by mail to divers persons in several of the States of the United States a circular containing advertising matter in regard to the paints sold by respondent, on the first and outside page of which circular appeared in large letters the following words: "Army and Navy brand. United States Salvage Co., Cleveland, Ohio."

PAR. 7. During the period between January, 1920, and April, 1920, said Lind sold no paint under any name whatsoever; and from on or about April, 1920, until July 21, 1920, said Lind was engaged under the name of "Army & Navy Paint Co.," 7525 Broadway, Cleveland, Ohio, in the sale and offering for sale of paints to divers persons in several of the States of the United States. Said Lind caused to be printed in divers newspapers in several of the States of the United States advertisements for the purpose of furthering the sale of such paint, in which advertisement he referred to such paints as "Our brand of Army and Navy paint." The use of such business or trade name, to wit, "Army & Navy Paint Co.," and the advertisements of the paint sold by respondent under such name as "Army

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and Navy paint" was misleading and tended to deceive and mislead the public into the belief that the paint sold by respondent was paint manufactured for the use of the United States Army or Navy, or sold by the United States Army or Navy, to respondent as surplus Government stock, or otherwise.

PAR. 8. Respondent, on July 21, 1920, after the service upon him of the complaint issued in this cause, and upon the day set for the taking of testimony therein, waived the taking of testimony and offered to discontinue the use of the aforesaid name, to wit, "United States Salvage Co.," and the aforesaid name, to wit, "Army & Navy Paint Co.," and to refrain from using any other name which would indicate or suggest to the public that respondent was connected with the United States Army or Navy, or was selling paints manufactured for the use of the United States Army or Navy, or sold by the United States Army or Navy to respondent as surplus stock, or otherwise.

CONCLUSIONS.

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." The conduct of the respondent in the course of his business affords sufficient ground for the issue of an order to prevent the continuance of the practice found to be unfair.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the evidence in the case, the same being contained in an agreed statement of facts duly filed herein, and the Commission having made its findings as to the facts with its conclusions that the respondent has violated the provisions of the act of Congress, approved Sept. 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, A. E. Lind, doing business under the assumed name and style of United States Salvage Co., do cease and desist:

(1) From using as a business or trade name the words "United States Salvage Co.," or the words "Army & Navy Paint Co.," in connection with the sale or offering for sale of paints not manufactured for the use of the United States Government, or sold by the United

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States Government to respondent, or any other, as surplus stock or otherwise; and

(2) From advertising under and by means of the aforesaid business or trade names the sale of any paints not manufactured for the use of the United States Government or sold by the United States Government to respondent, or any other, as surplus stock or otherwise; and

(3) From selling or offering or advertising for sale under the trade name "United States Salvage Co." or "Army & Navy Paint Co." any paint or varnish represented in terms or by trade name, directly or indirectly, to be or to have been manufactured for the United States Government or any of its agencies and sold to or by it or them, if the said representation is not true in fact.

And it is further ordered, That said respondent, A. E. Lind, doing business under the assumed name and style of United States Salvage Co., shall within 30 days from date of service of this order file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

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