

Complaint.

FEDERAL TRADE COMMISSION
v.
MONTGOMERY WARD & COMPANY.

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

Docket 610—December 6, 1920.

SYLLABUS.

Where a mail-order house in its catalogues falsely advertised that a liquid roof cement there offered contained no coal tar, and prominently displayed a guarantee that "We promise you that every article illustrated or priced in this book will reach you precisely as described"; with the tendency and effect thereby of misleading and deceiving the purchasing public:

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 Montgomery Ward & Co., hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, 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 said Montgomery Ward & Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located in the city of Chicago, in said State.

PAR. 2. That the respondent is now and for more than two years last past has been engaged in the business of selling throughout the various States and Territories of the United States and the District of Columbia, various machines, instruments, preparations, supplies, clothing, furnishings, building materials, roofing preparations, and other articles in competition with other persons, firms, copartnerships, and corporations similarly engaged, and there is now and has been at all times hereinafter mentioned a constant current of trade in commerce in said various machines, instruments, preparations,

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supplies, clothing, furnishings, building materials, roofing preparations, and other articles among and between the various States of the United States, the Territories thereof, and the District of Columbia, especially to and through the city of Chicago in the State of Illinois, and therefrom to and through other States of the United States and Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondent has been for more than two years last past, and still is, doing business as a mail-order house and distributes throughout the various States and Territories of the United States, the District of Columbia, and foreign countries, printed catalogues in which it advertises the various articles it offers for sale; that the respondent has been within two years last past, and still is, by means of advertisements in its said catalogues, offering for sale a liquid roofing cement in which said advertisements the respondent represents that the said liquid roofing cement so advertised by it for sale contains no coal tar, when in truth and in fact the said liquid roofing cement so offered for sale by the respondent and represented by the respondent to contain no coal tar does contain coal tar, which respondent has well known; that such advertisements are false and misleading because in truth and in fact, as respondent well knows, said liquid roofing cement does contain coal tar.

PAR. 4. That by reason of the facts hereinbefore alleged the respondent is and has been using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress entitled: "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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, Montgomery Ward & Co., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having entered its appearance by its attorney, George R. Durgan, Esq., and filed its answer herein, an agreed statement of facts was thereupon executed by counsel for respondent and the chief counsel for the Commission and duly filed in this cause, said agreed statement of facts being in lieu of evidence, no testimony being taken or other evidence offered herein.

The respondent, by such agreed statement of facts, agreed to waive oral argument and the privilege of filing a written brief, and consented that the Commission should thereupon make and enter its report of findings as to the facts, and its order, disposing of this cause.

And thereupon the Commission, having 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. That the respondent, Montgomery Ward & Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, in said State.

PAR. 2. That the respondent is now and for more than two years last past has been engaged in the business of selling throughout the various States and Territories of the United States, and the District of Columbia, various machines, instruments, preparations, supplies, clothing, furnishings, building materials, roofing preparations, and other articles, in competition with other persons, firms, copartnerships, and corporations similarly engaged; and there is now and has been at all times hereinafter mentioned a constant current in trade and commerce in the said various machines, instruments, preparations, supplies, clothing, furnishings, building materials, roofing preparations, and other articles, among and between the various States of the United States, the Territories thereof, and the District of Columbia, especially to and through the city of Chicago, in the State of Illinois, and therefrom to and through the other States of the United States and the Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondent has been for more than two years last past doing business as a mail-order house and distributing throughout the various States and Territories of the United States, the District of Columbia, and foreign countries printed catalogues in which it advertises various articles it offers for sale; and that the respondent has been, for more than two years last past, by means of advertisements in its said catalogues, offering for sale a liquid roof cement, in which said advertisements respondent has represented that said liquid roof cement contains no coal tar. That said representation was false, because said liquid roof cement did in truth and fact contain coal tar, all of which respondent knew or ought to have known. That such false representation in such advertisement in said

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catalogues tended to and did deceive and mislead the purchasing public and tended to and did cause the purchasing public to believe that respondent's liquid roof cement contained no coal tar, whereas in truth and fact such liquid roof cement did contain coal tar.

PAR. 4. That in the fore pages of each of the aforesaid catalogues of respondent appeared a prominently displayed guaranty, in substance as follows:

We promise you that every article illustrated or priced in this book will reach you precisely as described.

That the aforesaid false representation, that said liquid roof cement contained no coal tar, together with the aforesaid guaranty, that every article described in such catalogues would reach the purchaser exactly as described, tended to and did mislead and deceive the purchasing public, and cause them to believe that respondent's liquid roof cement contained no coal tar, whereas in truth and fact such liquid roof cement did contain coal tar.

PAR. 5. That there was no evidence to show that the respondent did in fact know that the said liquid roof cement did contain coal tar.

PAR. 6. That on or about January 14, 1920, the respondent being informed by a representative of the Federal Trade Commission of said false and misleading advertisement, discontinued the further sale of said liquid roof cement, advertised as aforesaid.

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 the complaint of the Commission, the answer of the respondent, and the agreed statement of facts, duly and regularly filed herein in lieu of testimony and as the evidence in this case, and the Commission having made its findings as to the facts with its conclusion 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,"

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Order.

It is now ordered, that the respondent, Montgomery Ward & Co., and its officers, representatives, agents, and servants, do cease and desist:

From publishing, circulating, or causing to be published or circulated, throughout the several States of the United States, the Territories thereof, the District of Columbia, or foreign countries, any representation, whether in respondent's catalogues, advertisements, or otherwise, that liquid roof cement, sold or offered for sale by respondent, contains no coal tar, unless such liquid roof cement does in truth and in fact contain no coal tar.

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