

Complaint.

FEDERAL TRADE COMMISSION

v.

SUNBEAM CHEMICAL COMPANY, INC.

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

Docket 462—April 18, 1921.

SYLLABUS:

Where a corporation engaged in the manufacture and sale of dye soap, with intent to injure a competitor's business, falsely stated to customers and prospective customers of the competitor that in a suit against him for infringement of patent it had been granted an injunction restraining the sale of his products:

Held, That such misrepresentation, 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 the Sunbeam Chemical Co. (Inc.), hereinafter referred to as respondent, has been and now is using unfair methods of competition in interstate commerce in violation of the provisions 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," 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, Sunbeam Chemical Co. (Inc.), is, and at all times hereinafter mentioned was, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business in the city of Chicago, in said State, now and for more than two years last past engaged in the manufacture and sale of dye soap and in the shipment thereof from its place of manufacture to purchasers thereof in other States of the United States and the District of Columbia, in direct competition with numerous other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent for more than two years last past, with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of dye soap in interstate commerce as aforesaid, has instituted suits for unfair competition against competing manufacturers of dye soap and has caused notice of its

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claims against its competitors for unfair competition and of the institution of such suits to be widely circulated among brokers, jobbers, and retailers throughout the United States, through whom such products are generally distributed, and among publishers of magazines and periodicals circulated throughout the United States which are ordinarily used for advertising such products, and has threatened the institution of similar suits against such brokers, jobbers, retailers, and publishers dealing in or advertising the products of competitors; that, notwithstanding that applications by the respondent to the courts for injunctions against the sale of the products of competitors were denied, the respondent has falsely represented to said brokers, jobbers, and retailers that it had obtained such injunctions, and that the effect of such claims, notices, threats, and representations has been to intimidate customers and prospective customers of competitors and to induce them to refuse to deal in the dye soaps of competitors and to cause said publishers of magazines and periodicals to refuse to accept advertising from said competitors and to cancel contracts already entered into for the publication of such advertising.

PAR. 3. That the respondent, in the conduct of its business in manufacturing and selling dye soap in interstate commerce as aforesaid, for more than two years last past, with the intent, purpose, and effect of eliminating competition in the manufacture and sale of dye soap, has purchased from dealers such stock of competitors' products as said dealers had on hand, and that the effect of such practice has been and is to remove the products of competitors from competition with those of the respondent and to obtain for respondent the exclusive trade of dealers handling dye soap.

PAR. 4. That the respondent, in the conduct of its business of manufacturing and selling dye soap in interstate commerce as aforesaid, for more than two years last past has caused to be circulated among jobbers, retailers, and the purchasing public generally throughout the United States statements and representations to the effect that the dye soaps of competitors are not suitable for the purposes for which they are sold, that they contain acids injurious to fabrics and the like, all of which statements and representations are false and mislead dealers and the purchasing public generally into giving an undue preference to the dye soap manufactured by the respondent and have the effect of causing great loss and damage to competitors.

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 com-

plaint upon the respondent, the Sunbeam Chemical Co. (Inc.), 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 and filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint and on behalf of respondent before an examiner of the Federal Trade Commission duly appointed.

And thereupon this proceeding comes on for final hearing, the Commission and respondent having, through their respective attorneys, filed briefs, and having waived oral argument, and the Commission, having duly considered the same and the record and being 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, Sunbeam Chemical Co. (Inc.), 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 the State of Illinois, and that respondent for more than two years last past has been and now is engaged in the business of manufacturing and selling dye soap and in the shipment thereof to and between the various States of the United States in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That during the year 1919 the Magic Manufacturing Co. was 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 the State of Illinois, and was engaged in the business of manufacturing and selling dye soap, in direct competition with the respondent.

PAR. 3. That the respondent on February 15, 1919, filed a suit against the Magic Manufacturing Co. for unfair competition and infringement of trade-mark in the Circuit Court of Cook County, Ill.; that on March 29 of the same year the application for injunction as prayed for in respondent's bill of complaint in said suit was denied; that the respondent, on the 11th day of April, 1919, filed another suit against the Magic Manufacturing Co. for infringement of trade-mark in the District Court of the United States for the Northern District of Illinois, Eastern Division; that these two suits constitute the only litigation between the respondent and the Magic Manufacturing Co.

PAR. 4. That during the year 1919 the respondent's agents and brokers stated to customers and prospective customers of its competi-

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tor, the Magic Manufacturing Co., that the respondent had sued the Magic Manufacturing Co. for infringement of patent, and that the respondent had been granted an injunction restraining the sales of the products of the Magic Manufacturing Co.; that the Magic Manufacturing Co. was never sued by respondent for infringement of patent; that the respondent was never granted an injunction against the Magic Manufacturing Co.; that these statements were made for the purpose and intent of injuring the business of its competitor, the Magic Manufacturing Co.

CONCLUSION.

That the methods of competition set forth in the foregoing findings as to the facts are, under the circumstances set forth, unfair methods of competition in violation of the provisions 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 upon the complaint of the Commission, the answer of the respondent, the testimony, and the evidence, and the Commission having made its findings as to the facts, with its conclusion that the respondent had violated the provisions 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 ordered, That the respondent, the Sunbeam Chemical Co. (Inc.), its officers, agents, brokers, representatives, servants, and employees, do cease and desist, directly or indirectly:

From stating to customers and prospective customers of competitors, for the purpose and intent of injuring the business of such competitors, that respondent has been granted an injunction restraining the sales of the products of the Magic Manufacturing Co. or others of its competitors when in fact no such injunction has been obtained.

It is further ordered, That the respondent, Sunbeam Chemical Co. (Inc.), shall, within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

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