OF LIBERTY OIL PRODUCTS COMPANY.

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

Docket 611—June 4, 1921.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of lubricating oils, adulterated linseed oil, and like products, at the request of purchasing dealers labeled a mixture of boiled (or Raw) linseed oil, mineral oil, and a drier with the name of the dealer, together with the words "Guaranteed for Mechanical Purposes. Inedible Compound Boiled (or Raw) Linseed Oil * * *," without stating the other ingredients; and

Where a corporation and an individual dealing in oils, roofing cements, concrete hardeners, paints, and like products,

(*a*) Sold a mixture of boiled (or raw) linseed oil, mineral oil, and a drier, labeled, at their request, as above described;

(*b*) Advertised and offered through circular letters various products compounded with mineral oil under such characterizations as "Extra W. S. Lard Oil," "Brown Strained Fish Oil," "Straits Fish Oil," "Sperm Oil," etc., with such statements as "You are undoubtedly aware that there is an enormous shortage of Animal Oils * * * and while we do not guarantee our products to be 100% pure, we feel confident that the same will meet your requirements for all mechanical and industrial uses * * *," and "Our oils are guaranteed for all mechanical and industrial purposes, * * *"; and

(*c*) Advertised and offered through circular letters certain products compounded with mineral oil which it characterized as "Comp. Raw Linseed Oil," "Comp. Boiled Linseed Oil," and "Comp. Turpentine," together with the statements "You are undoubtedly aware that the market price on Linseed oil and turpentine has advanced to practically the highest price ever known. For this reason we are producing a special grade of oil, and while we do not guarantee the same to be absolutely pure, we will, however, guarantee it for all painting purposes";

With a tendency and capacity, in such circular letters, to deceive and mislead customers into believing that part of the products so offered were pure oils of the kind specified, and that the rest were special grades of special compound oils, entirely proper for all industrial purposes, and not mixtures of the oils specified with mineral oil:

Held, That such mislabeling, and 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 the Star Provision Com-

pany, Malone Oil Company, and B. Marx, trading under the name and style of Liberty Oil Products Company, all of whom are hereinafter referred to as respondents, have been and are 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:

PAR. 1. That the respondent Star Provision Company is a corporation organized and existing under the laws of the State of Ohio, with principal place of business at Cleveland, in said State. That the respondent Malone Oil Company is a corporation organized and existing under the laws of the State of Ohio, with principal place of business at Cleveland in said State. That the respondent B. Marx is treasurer and manager of the respondent Star Provision Company and conducts a branch of the business of said respondent under the trade name of Liberty Oil Products Company.

PAR. 2. That the respondent Star Provision Company is engaged in the business of dealing in oils and paints, cements, concrete hardeners, and like commodities, part of which business is conducted in its own corporate name and part under the trade name of Liberty Oil Products Company. That the respondent Malone Oil Company is engaged in the business of manufacturing and selling lubricating oils, adulterated linseed oil, and like products. That each of said respondents sells their respective products and commodities in various States of the United States and causes same to be transported to the purchasers thereof from the State of Ohio through and into various other States.

PAR. 3. That when the respondent Star Provision Company obtains from a customer an order for lubricating oil or adulterated linseed oil, such order is turned over to the respondent Malone Oil Company, which makes up the commodity so ordered and which is put in containers and labeled as the product of the respondent Star Provision Company or the Liberty Oil Products Company.

PAR. 4. That the respondent Star Provision Company, both in its own corporate name and under the trade name of Liberty Oil Products Company, by circulars and circular letters mailed to prospective customers, solicits trade in various lubricating oil compounds and adulterated linseed oils without disclosing to the purchasing public the component ingredients of said compounds, and such circulars are calculated to and do deceive the purchasing public

and create the erroneous impression that such oils and compounds are pure lard, fish, sperm, or linseed oils. That said circulars and circular letters also contain the false and misleading statement that such oils and compounds so offered to the purchasing public will meet the requirements of all mechanical and industrial uses.

PAR. 5. That the actions and doings of the said respondents, severally and in their common action, herein referred to and recited, is an unfair method of competition in interstate commerce within the meaning 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 its complaint upon the respondents, the Star Provision Company, Malone Oil Company, and B. Marx, trading under the name and style of Liberty Oil Products Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearance by their attorney, James Metzenbaum, Esq., and filed their answer herein, an agreed statement of facts was duly executed under date of November 1, 1920, by said counsel for respondents and by the chief counsel for the Federal Trade Commission, and duly filed in the records of this cause, said agreed statement of facts, subject to the approval and acceptance of the Commission, to be in lieu of testimony, and to be the evidence in this cause. By such agreed statement of facts respondents agreed to waive the privilege of filing written brief herein, and agreed that the Commission should proceed forthwith to enter its report, stating its findings as to the facts, and its conclusion, and to make and enter its order, disposing of this cause; but reserving to the respondents, nevertheless, the right to file a motion to dismiss the complaint, and to offer oral argument in support thereof. Such right and privilege of filing such motion to dismiss the complaint, and to offer oral argument in support thereof, was subsequently, under date of November 5, 1920, withdrawn and waived by respondents, as will more fully appear from the files and records of this cause.

And thereupon this proceeding came on for final hearing, 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. That the respondent Star Provision Company is a corporation organized and existing under the laws of the State of Ohio, with principal place of business in the city of Cleveland, in said State. That the respondent Malone Oil Company is a corporation organized and existing under the laws of the State of Ohio, with principal place of business in the city of Cleveland, in said State. That the respondent B. Marx is treasurer and manager of the respondent Star Provision Company, and conducts a branch of the business of said respondent under the trade name of Liberty Oil Products Company.

PAR. 2. The respondent Star Provision Company is engaged in the business of buying and selling oils, paints, cements, concrete hardeners, and like commodities, part of which business is conducted under its own corporate name and part under the trade name of Liberty Oil Products Company. The respondent B. Marx, for the Star Provision Company aforesaid, and also under the trade name of Liberty Oil Products Company, as aforesaid, is engaged in the business of selling oils, roofing cements, concrete hardeners, paints, and like products. Each and all of said respondents sell their respective products and commodities in various States of the United States, and cause the same to be transported to the purchasers thereof, from the State of Ohio, through and into various other States of the United States. Said respondents have sold and transported their respective products and commodities, as aforesaid, during the year last past and prior thereto, in direct competition with other individuals, firms, and corporations engaged in the same or similar business, and likewise selling and transporting their products in and through the several States of the United States.

PAR. 3. The said respondents the Star Provision Company and B. Marx, under the said trade name of Liberty Oil Products Company, have been and are selling to purchasers in various States of the United States a product which is labeled as follows:

Liberty Oil Products Co. Guaranteed for Mechanical Purposes. Inedible Compound Boiled (or Raw) Linseed Oil. Cleveland, Ohio.

Said product, so sold and labeled, as aforesaid, was not pure boiled linseed oil or pure raw linseed oil; but was a compound consisting of boiled (or raw) linseed oil, mineral oil, and a dryer, mixed together. The names of the other ingredients, to wit, mineral oil and dryer, did not and do not appear upon said label or elsewhere upon the package containing such product. Respondents admit that said product

should be described as "Inedible compound boiled (or raw) linseed oil and mineral oil and dryer"; and agree to so label in the future.

PAR. 4. That the said respondent Malone Oil Company, at the request and instance of the said respondents the Star Provision Company and B. Marx, trading under the name of Liberty Oil Products Company, applied the aforesaid brand or label (hereinbefore set forth in par. 3 hereof) to the said oil products so sold and advertised, as aforesaid, by the aforesaid respondents the Star Provision Company, and B. Marx, trading under the name of Liberty Oil Products Company. The said brand or label was stenciled, at the request and instance of the last-mentioned respondents, upon the barrels or containers of the said products.

PAR. 5. The said respondents the Star Provision Company and B. Marx, under the said name, to wit, Liberty Oil Products Company, have during the year last past circulated, to prospective customers in various States of the United States, certain circular letters or advertisements, true copies whereof were attached to the said agreed statement of facts and incorporated therein, and marked, respectively, "Exhibit 1," "Exhibit 2," "Exhibit 3," and "Exhibit 4." Said circular letters, distributed as aforesaid by the respondents aforesaid, advertised and offered for sale certain oil products, which oil products in all cases were not pure oils of the kind specified, but were compounded with mineral oil. Said circular letters are here set forth in full, as follows:

EXHIBIT 1.

Lard Oil	THE STAR PROVISION CO.	Seal Oil
Fish Oil	Animal Oils	Cod Oil
Neatsfoot Oil	1836 Euclid Avenue	Whale Oil
	Cleveland, O.	

You are undoubtedly aware that there is an enormous shortage of Animal Oils, which is likely to continue for some time to come. We desire to call your attention to the fact that we are manufacturing special grades of this material and while we do not guarantee our products to be 100% pure, we feel confident that the same will meet your requirements for all mechanical and industrial uses. Shipments are forwarded subject to your inspection and approval.

We are in position to make prompt shipment and quote subject to immediate acceptance the following:

Extra W. S. Lard Oil	$1.62 per gallon
Extra Lard Oil	1.45 " "
No. 1 Lard Oil	1.35 " "
No. 2 Lard Oil	1.18 " "
Brown Strained Fish Oil	1.16 " "
Straits Fish Oil	.85 " "
Sperm Oil	1.50 " "

Prices quoted above are for delivery as you may desire between this date and February 1, in barrel lots, freight paid to your City. Where five or more barrels are purchased we allow a reduction of two cents per gallon.

We feel sure that by placing your business with us for any of the above grades of Oil the same will effect you a liberal saving, and you have our guarantee for quality as well as prompt deliveries.

May we be favored with your order?

Very truly, yours,

THE STAR PROVISION COMPANY.

EXHIBIT 2

Lard Oil	THE STAR PROVISION Co.	Cod Oil
Fish Oil	Animal Oils	Seal Oil
Neatsfoot Oil	1836 Euclid Avenue	Whale Oil
	Cleveland, O.	

You are undoubtedly aware that there is an enormous shortage of Animal Oils, and considerable difficulty is encountered in making any kind of shipments. For this reason we suggest that you place orders now for your immediate or future requirements.

Subject to immediate acceptance by return mail and for delivery as you may desire between this date and September 1, we quote:

Inedible Comp. Extra W. S. Lard Oil	$1.44 per gallon
Inedible Comp. No. 1 Lard Oil	1.18 " "
Inedible Comp. No. 2 Lard Oil	1.04 " "
Inedible Comp. Prime Neatsfoot Oil	1.46 " "
Inedible Comp. Extra Neatsfoot Oil	1.20 " "
Inedible Comp. No. 1 Neatsfoot Oil	1.06 " "
Inedible Comp. Sperm Oil	1.30 " "
Inedible Comp. Brown Strained Fish Oil	1.12 " "
Inedible Comp. Straits Fish Oil	1.02 " "

The above quotations are for delivery F. O. B. your City, in barrel lots. Where four or more barrels are ordered we allow a discount of 3¢ per gallon. We also pack the above in Half-barrels and case lots containing 12 1-gallon cans or 2 5-gallon cans. Where one-gallon cans are purchased we place labels on each can bearing your name and address.

Our oils are guaranteed for all mechanical and industrial purposes, and shipments are forwarded subject to your inspection and approval. We feel confident that you will effect quite a saving in placing your business with us for immediate or future delivery.

Kindly let us hear from you should you be interested.

Very truly, yours,

THE STAR PROVISION COMPANY.

EXHIBIT 3.

Lard Oil	THE STAR PROVISION Co.	Cod Oil
Fish Oil	Animal Oils	Seal Oil
Neatsfoot Oil	1836 Euclid Avenue	Whale Oil
	Cleveland, O.	

Owing to the increased cost of raw materials, we are looking for advances on all grades of Animal Oils, and if you expect to be in the market between this date and

July first, we suggest that you cover now your requirements for immediate or future delivery.

Subject to immediate acceptance, we quote:	bbls.	½ bbls.	
Inedible Com. E. W. S. Lard Oil	$1.48	$1.53	per gallon
" " No. 1 Lard Oil	1.16	1.21	" "
" " Prime Neatsfoot Oil	1.52	1.57	" "
" " No. 1 Neatsfoot Oil	1.18	1.23	" "
" " Menhaden Fish Oil	1.18	1.23	" "
" " Straits Fish Oil	1.04	1.09	" "
" " Sperm Oil	1.35	1.40	" "

The above quotations are F. O. B. your City, and for delivery as you may desire between this date and July first. We also pack the above in case lots containing 12 1-gallon cans or 2 5-gallon cans. Where purchased in this manner we place labels on the cans bearing your name and address.

Our products are guaranteed for all mechanical and industrial purposes, all shipments being forwarded SUBJECT TO YOUR INSPECTION and APPROVAL. We feel sure that by placing your business with us you will be effecting a liberal saving, and you have our guarantee for quality as well as prompt delivery.

Are you in the market? May we be favored with your order?

Very truly, yours,

THE STAR PROVISION COMPANY.

EXHIBIT 4.

LIBERTY OIL PRODUCTS CO.
Oils for Industrial Uses
325 Union Building
Cleveland, O.

Subject: Linseed Oil and Turpentine.

You are undoubtedly aware that the market price on Linseed Oil and Turpentine has advanced to practically the highest price ever known. For this reason we are producing a special grade of oil, and while we do not guarantee same to be absolutely pure, we will, however, guarantee it for all painting purposes.

We are in position to make prompt shipment, and quote subject to immediate acceptance:

Comp. Raw Linseed Oil	$1.53	per gallon
Comp. Boiled Linseed Oil	1.55	" "
Comp. Turpentine	1.54	" "

The above quotations are for barrel lots, F. O. B. your City, less freight, and for delivery as you may desire between this date and March fifteenth.

We are confident that once you try our product you will purchase no other. All orders are subject to your inspection and approval.

Are you in the market? May we be favored with your order?

Very truly, yours,

THE LIBERTY OIL PRODUCTS CO.

PAR. 6. Said circular letters, so distributed as aforesaid, were false and misleading, and had a tendency and capacity to mislead and deceive said prospective customers, and directly tended to

mislead and deceive said prospective customers, and to induce them to believe that part of the oil products, so offered for sale and advertised as aforesaid, were pure oils of the kind specified, and not compounds, mixtures, or combinations of such oils with mineral oil, and that the rest of such oil products were special grades of special compound oils, entirely proper for all mechanical, industrial, or painting purposes, and not compounds, mixtures, or combinations of oils of the kind specified with mineral oil.

CONCLUSIONS.

The practices of the said respondents, and of each of them, 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 several respondents and the agreed statement of facts duly executed by counsel for respondents and for the Commission, approved by the Commission, and filed in the records and files of this case in lieu of testimony and as the evidence in this case; and the Commission having made its findings as to the facts with its conclusions that the several respondents have 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:

I. That respondents the Star Provision Company and B. Marx, trading under the name and style of Liberty Oil Products Company, do severally and jointly *cease and desist.*

(1) From selling or offering for sale in interstate commerce any compound, mixture, or combination of linseed oil with mineral oil or other substances which is labeled or branded as "linseed oil," unless the name or names of such other oil, to wit, mineral oil, or such other substances, be also displayed upon such labels or brands, in conjunction with the words "linseed oil" and in letters of the same size, shape, and prominence as said words "linseed oil"; and

(2) From holding out or offering for sale in interstate commerce, by means of letters, circulars, or other advertisements, any com-

pound, mixture, or combination of any of the following several oils, to wit, turpentine, linseed oil, sperm oil, lard oil, brown strained fish oil, straits fish oil, neatsfoot oil, or menhaden fish oil, with either mineral oil or other oils or substances, unless it clearly and plainly appears upon all of such letters, circulars, or other advertisements that such products are compounds, mixtures, or combinations of the several oils aforesaid, and not pure turpentine, linseed oil, sperm oil, lard oil, brown strained fish oil, straits fish oil, neatsfoot oil, or menhaden fish oil, respectively; and unless such letters, circulars, or other advertisements state clearly and plainly in letters of equal size, shape, and prominence the name or names of such oil, to wit, mineral oil, or such other oils or substances, used in a compound, mixture, or combination with any of the several oils aforesaid, to-wit, turpentine, linseed oil, sperm oil, lard oil, brown strained fish oil, straits fish oil, neatsfoot oil, or menhaden fish oil, wherever said oils last mentioned are quoted, offered for sale, or otherwise advertised in said letters, circulars, or other advertisements; and

II. That respondent Malone Oil Company do *cease and desist* from applying or affixing any label or brand to or upon any barrel or other container of any compound, mixture, or combination of linseed oil with mineral oil or other substances, at the request and instance of respondents, Star Provision Company or B. Marx, or either of them, or of any other individual, company, or corporation, or at all, unless the name or names of such other oil, to wit, mineral oil, or such other substances, be also displayed upon such label or brand in conjunction with the words "linseed oil," in letters of the same size, shape, and prominence as said words "linseed oil."

It is further ordered, That the respondents, the Star Provision Company, Malone Oil Company, and B. Marx, trading under the name and style of Liberty Oil Products Company, do, within thirty (30) days from the date of the service upon them of this order, file with the Commission individual and separate reports for each of the said respondents, setting forth in detail the manner and form in which each of them has complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION