FEDERAL TRADE COMMISSION
v.
McCLOSKEY VARNISH COMPANY.

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

Docket 748—June 10, 1921.

SYLLABUS.

Where a corporation competitively engaged in the manufacture and sale of varnish, sold its product, not made for the Government or in accordance with Government specifications, in containers falsely and deceptively labeled and branded "Government Spar":

Held, That such mislabeling and misbranding, 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 McCloskey Varnish Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition 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 this respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a corporation organized under the laws of the State of Pennsylvania, with principal place of business in Philadelphia, in said State.

PAR. 2. That respondent is engaged in the business of manufacturing and selling varnishes, japans, and fillers, and causes the commodities sold by it to be transported to the purchasers thereof, from the State of Pennsylvania, through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That respondent in the course of its business, as described in paragraph 2 hereof, makes use of deceptive labels which it places upon the containers of a varnish sold by it, which labels contain the words "Government Spar," although the varnish so labeled had not been procured from the Government, or manufactured for

its use, or made in accordance with any Government formula or specifications; which labels were calculated to and did mislead and deceive the purchasing public.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and 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 a complaint upon the respondent, McCloskey Varnish 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, H. M. McCaughey, and filed its answer herein, thereafter made, executed, and filed an agreed statement of facts, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case, and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter thereon, without the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission, being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, McCloskey Varnish Co., is a corporation duly incorporated and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office in the city of Philadelphia, in said State, and is engaged in the manufacture of varnishes, japans, and fillers.

PAR. 2. The respondent, McCloskey Varnish Co., sells its products, and causes same to be transported to purchasers thereof, throughout the different States of the United States, and there is continually, and has been at all times herein mentioned, a constant current of trade in commerce in said products between and among the various States of the United States; and the respondent conducts its business in competition with other corporations, copartnerships, and individuals similarly engaged.

413 Conclusion.

PAR 3. Until it learned of this investigation, about November 1, 1920, the respondent, in the sale and shipment of its products as hereinbefore described, has sold and shipped varnish in containers which it labeled and branded "Government Spar." Dealers purchasing this varnish offer it to the general purchasing public as thus labeled and branded. The varnish, the containers for which are so labeled and branded, was not procured from the Government of the United States, nor manufactured for its use, nor made in accordance with any United States Government formula, specification, or requirement. The aforesaid label and brand, used upon the containers for said varnish, indicates that said varnish was procured from the Government of the United States, or manufactured for its use, or made in accordance with some United States Government formula, specification, or requirement, and thereby the general purchasing public is led to believe that the said varnish, labeled and branded as aforesaid, is varnish obtained from the Government of the United States, or manufactured for its use, or made in accordance with some United States Government formula, specification, or requirement, which the general purchasing public believes to be varnish of an unusually high grade or character because approved by the United States Government.

PAR. 4. Prior to about November 1, 1920, there were, and now are, manufacturers selling their products in commerce among the several States of the United States who make varnish similar to that made and sold by the respondent, but the containers for which are not labeled or branded with any word or words to indicate that the Government of the United States has had any connection with said varnish. Prior to about November 1, 1920, there were, and now are, manufacturers selling their products in commerce among the several States of the United States who sell varnish made for the United States Government, or according to United States Government formula, specification, or requirement, and represent, by labels and brands on such varnish, that it is varnish made for the United States Government or made according to formula, specification, or requirement of the United States Government.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in 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.

The proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and the statement of facts agreed upon by the respondent and counsel for the Commission, 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,"

It is now ordered, That the respondent, McCloskey Varnish Co., its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly employing or using the label or brand "Government," or any similar descriptive label or brand, on varnish, or the container therefor, except either (1) when the varnish had been obtained from the United States Government; or (2) when the varnish has been manufactured for, and accepted by, the United States Government; or (3) when the varnish has been made in accordance with some United States Government formula, specification, or requirement, and the word or term indicating the United States Government is joined or used with some other words or terms indicating compliance with some United States Government formula, specification, or requirement (e. g., made in accordance with Government W. D. Specification No. 97); or (4) when the varnish has been obtained from some government other than the United States Government, and the word or term used to indicate government is joined or used with some other word or term indicating the government from which the varnish was obtained (e. g., French Government Spar Varnish); or (5) when the varnish has been manufactured for, and accepted by, some government other than the United States Government, and the word or term used to indicate government is joined or used with some other word or term indicating the government for which the varnish was manufactured and by which it was accepted (e. g., Canadian Government Spar Varnish); or (6) when the varnish has been manufactured in accordance with the formula, specification, or requirement of some government other than the United States Government, and the word or term used to indicate government is joined or used with some other words or terms indicating compliance with the formula, specification, or requirement

of the government in accordance with whose formula, specification, or requirement the varnish has been manufactured (e. g., made in accordance with specification of the Italian Government).

Respondent is further ordered to file a report in writing with the Commission 60 days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

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