

Complaint.

FEDERAL TRADE COMMISSION

v.

CONSOLIDATED OIL COMPANY.

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

Docket 706—July 12, 1921.

SYLLABUS.

Where a corporation dealing in paints, oils, turpentine, and adulterated linseed oil and turpentine, designated a product which it manufactured and sold and which contained no graphite or free carbon, but was composed chiefly of coal tar with a small amount of deoderants, as "Graphite Carbon Roof Paint" and later "Carbon Roof Paint," with the effect of misleading and deceiving the public:

Held, That such false and misleading designation of product, 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 Consolidated Oil 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 and existing under the laws of the State of Ohio, with its principal place of business in the city of Cleveland, in said State.

PAR. 2. That respondent is engaged in the business of dealing in paints, oils, turpentine, adulterated linseed oil and turpentine, or substitutes for pure linseed oil and turpentine, and causes said commodities to be transported to the purchasers thereof from the State of Ohio through and into other States of the United States, and carries on portions of its business under the trade names of Manchurian Linseed Oil Co., Standard Linseed Co., Southern States Turpentine Co., and Standard Paint & Lead Co., and in the conduct of such business is 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, sells a product which it designated as "Glidden Core Oil"; that the Glidden Co. is a well-known paint manufacturer

Findings.

4 F. T. C.

at Cleveland, Ohio, of high repute, and manufactured and sold a core oil which was well and favorably known to the trade and purchasing public, but said Glidden Co. discontinued the manufacture and sale of said core oil on or about January 1, 1920; that the product sold by respondent since January, 1920, as "Glidden Core Oil" was not the product of the Glidden Co., but was inferior to the core oil formerly manufactured by the Glidden Co. and was designated by respondent as "Glidden Core Oil" in order that it might sell same to the trade and purchasing public as and for the product of the said Glidden Co.

PAR. 4. That respondent further, in the course of its business as described in paragraph 2 hereof, sells a product which it originally designated as "Graphite Carbon Roof Paint," and later designated it as "Carbon Roof Paint," which paint is composed of 98 per cent coal tar and 2 per cent deodorants to disguise or conceal the coal tar as its principal constituent material, and which paint contains no graphite or free carbon; that roof paint, the chief constituent material of which is graphite or free carbon, is more expensive and of better quality than paint the chief constituent material of which is coal tar, and is preferred by the purchasing public over a paint made of coal tar; that the use of the words "graphite" or "carbon" in the name applied to said roof paint by respondent, as aforesaid, was calculated to and did mislead and deceive the purchasing public.

PAR. 5. 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, Consolidated Oil Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed its answer herein, and appearing by J. J. McCormick, Esq., its attorney, witnesses were examined and evidence received in support of the allegations of the complaint, before the Honorable Huston Thompson, the Federal Trade Commissioner theretofore duly appointed.

And at the conclusion of the said examination of witnesses and at the close of the evidence respondent, by its attorney, in a stipulation made a part of the record, admitted all of the facts alleged in the

Findings.

complaint subject to certain exceptions, and consented that the Commission should forthwith, upon said admissions and the evidence adduced, make its report, stating its findings as to the facts, and enter its order disposing of this said cause without further production of evidence or oral argument before the Commission or the filing of written briefs.

And thereupon this proceeding came on for final action by said Commission, and it having considered the complaint, the answer thereto, the evidence adduced, and the said stipulation, and being fully advised in the premises, makes this its findings as to the facts and its conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in the city of Cleveland, in the said State.

PAR. 2. That respondent is engaged in the business of dealing in paints, oils, turpentine, adulterated linseed oil and turpentine, or substitutes for pure linseed oil and turpentine, and causes said commodities to be transported to the purchasers thereof from the State of Ohio through and into other States of the United States and carries on portions of its business under the trade names of Manchurian Linseed Oil Co., Standard Linseed Co., Southern States Turpentine Co., and Standard Paint & Lead Co., and in the conduct of such business is in direct active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That the respondent, in the course of its business as described in paragraph 2 hereof, manufactured a certain product which it sold in commerce and which it originally designated as "Graphite Carbon Roof Paint" and later designated it as "Carbon Roof Paint," which product so manufactured and sold by the respondent is composed of 98 per cent coal tar and 2 per cent deodorants to disguise or conceal the coal tar as its principal constituent material, and which product, so manufactured and sold, contains no graphite or free carbon; that roof paint, the chief constituent material of which is graphite or free carbon, is more expensive and of better quality than the so-called "Graphite Carbon Roof Paint" or "Carbon Roof Paint" so manufactured and sold by respondent, the chief constituent material of which is coal tar, and is preferred by the purchasing public over a paint product made from coal tar; that the use of the words "graphite carbon" or the word "carbon" in the name applied to said product, manufactured and sold by the respondent as aforesaid, was calculated to and did mislead and deceive the purchasing public.

Order.

4 F. T. C.

PAR. 4. That the charges of unfair methods of competition in interstate commerce, as alleged in paragraph 3 of the complaint, are not sustained by the evidence.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in paragraph 3 of 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 testimony and evidence, 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, Consolidated Oil Co., its officers, representatives, agents and servants, do cease and desist:

1. From selling, offering for sale, or advertising the sale of any product, in interstate commerce, as "Graphite Carbon Roof Paint," unless the chief constituent material of such product be graphite and free carbon;

2. From selling, offering for sale, or advertising the sale of any product, in interstate commerce, as "Carbon Roof Paint," unless the chief constituent material of such product be free carbon;

It is further ordered, That the charges of unfair competition in interstate commerce, as alleged in paragraph 3 of the complaint herein, be and the same hereby are dismissed.

It is further ordered, That the respondent shall file with the Commission, within 60 days from the date of service upon it of this order, its report in writing, stating in detail the manner and form in which it has complied with the terms of this order.

ALBEN-HARLEY (L. WOLPER ET AL.).

31

Syllabus.

FEDERAL TRADE COMMISSION

v.

LOUIS WOLPER, JACOB WOLPER, AND ALBERT WOLPER,
PARTNERS, STYLING THEMSELVES ALBEN-HARLEY.