

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION

v.

TOUSEY VARNISH COMPANY.

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

Docket 797—November 22, 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 Tousey Varnish Co., hereinafter referred to as respondent, has been and is 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:

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

PAR. 2. That respondent is engaged in the business of manufacturing and selling varnishes and causes varnishes sold by it to be transported to the purchasers thereof, from the State of Illinois 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 misleading and deceptive labels which it places upon the containers of 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; that the labels used as aforesaid, are calculated to and

do mislead and deceive the purchasing public, and numerous persons are thereby induced to purchase such varnish upon the mistaken belief that it has been manufactured in accordance with a formula or specifications approved by the Government.

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, Tousey Varnish Co., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent neither filed an answer nor entered its appearance herein, but made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondent that the Federal Trade Commission shall take such agreed statement of facts as to 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 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. That the respondent, Tousey Varnish Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, and is engaged in the business of manufacturing varnish in the city of Chicago, in said State.

PAR. 2. That the respondent, Tousey Varnish Co., sells its products and causes same to be transported from the State of Illinois 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.

Conclusion.

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PAR. 3. That during the years 1919 and 1920 the respondent, Tousey Varnish Co., in the sale and shipment of its products as hereinbefore described, sold and shipped varnish in containers which were labeled and branded "Government Spar." Dealers purchasing this varnish offered and sold it to the general purchasing public as thus labeled and branded. The varnish, the containers for which were so labeled and branded, was not property of the United States Government, nor procured from the United States Government, nor manufactured for its use, nor made in accordance with any United States Government formula, specification, or requirement, nor was the United States Government or any department, branch or agency thereof in any way connected with the manufacture or sale of this product.

PAR. 4. That the word "Government," when applied to varnish, is generally understood by the purchasing public to mean 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, or that the United States Government or some branch or agency thereof, has in some way been connected with the manufacture or sale of said product, and the general purchasing public believes that such varnish is of an unusually high grade or character because approved by the United States Government.

PAR. 5. That the purchasing public is misled by said label and brand into the belief that such varnish is of an unusually high grade or character, and approved by the United States Government.

PAR. 6. That during the years 1919 and 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 indicating that the Government of the United States has had any connection with said varnish.

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.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and agreed statement of facts filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has 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 now ordered, That the respondent, Tousey 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 (1) when the varnish has 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).

Order.

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It is further ordered, That the respondent, Tousey Varnish Co., shall within 60 days after the service upon them of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

GUARANTEE VETERINARY CO. ET AL.

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Complaint.

FEDERAL TRADE COMMISSION

v.

GUARANTEE VETERINARY CO. AND GEORGE L. OWENS.