

Complaint.

FEDERAL TRADE COMMISSION

v.

A. LISNER, TRADING UNDER THE NAME AND STYLE
OF PALAIS ROYAL.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 783—March 6, 1922.

SYLLABUS.

Where an individual dealing in notions and toilet articles advertised as "White Ivory" articles composed of nitrated cellulose or pyroxylin plastic and resembling ivory in color; with a tendency thereby to mislead and deceive the purchasing public as to the value or utility thereof and to induce the purchase thereof in the mistaken belief that they were made of ivory:

Held, That such false and misleading advertising, 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 A. Lisner, doing business under the name and style of Palais Royal, hereinafter referred to as respondent, has been and is using unfair methods of competition in 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 owns and operates a department store in the City of Washington, District of Columbia, under the name and style of Palais Royal, and sells merchandise and commodities at retail in the District of Columbia, and in the conduct of such business is in competition with other individuals, copartnerships and corporations similarly engaged.

PAR. 2. That respondent, in the course of his business as described in Paragraph 1 hereof and for the purpose of bringing his merchandise and commodities to the attention of the purchasing public, causes advertisements of said merchandise and commodities to be inserted in newspapers and other advertising mediums having a general circulation in the District of Columbia; that many such advertisements contain false and misleading statements concerning

Findings.

4 F. T. C.

the merchandise and commodities offered for sale and sold by him; that among such false and misleading statements are statements to the effect that certain toilet articles offered for sale and sold by him are "White Ivory"; whereas, in truth and in fact, such toilet articles are not made of ivory, but are made of nitrated cellulose, or some other compound, so manufactured as to more or less closely resemble ivory in appearance; and that such false and misleading statements are intended and calculated to, and actually do, deceive and mislead the public as to the quality of said articles.

PAR. 3. That by reason of the facts recited respondent is using unfair methods of competition in commerce within the intent and meaning 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."

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, A. Lisner, trading under the name and style of Palais Royal, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

Respondent having entered his appearance and filed his answer herein, admitting that certain of the methods and things alleged in said complaint are true in the manner and form therein set forth, and having 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 with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein, 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 report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, trading under the name and style of Palais Royal, is engaged in the business of conducting a department store in the District of Columbia, in which store respondent sells and offers for sale to the public, in due course of retail trade, various commodities, among which are notions and toilet

articles; that respondent carries on his said business in direct, active competition with other dealers in like commodities in the District of Columbia.

PAR. 2. That respondent in the course of his business as described in Paragraph 1 hereof, on January 3, 1921 and on other dates within two years prior to the issuance of the complaint herein, caused certain advertisements to be published in the Washington Post, as a means of bringing to the attention of the purchasing public the merchandise and commodities offered for sale and sold by him; that in said advertisements reference was made to certain toilet articles so offered for sale and sold by respondent, which articles were described in said advertisements as "White Ivory Toilet Articles," although said articles were not made of ivory, but were made of Nitrated Cellulose or Pyroxylin Plastic, sometimes known commercially as "Pyralin" and resembling ivory in color; that the reference to such toilet articles in said advertisements as "White Ivory" had the capacity or tendency to mislead and deceive the purchasing public by creating in the minds of the public false or erroneous beliefs concerning the value of utility of said articles, and in some instances, to induce the public to purchase said articles upon the mistaken belief that such articles were made of ivory.

PAR. 3. That respondent immediately prior to the issuance of the complaint herein, when his attention was called to the nature and subject matter of the advertisements described and referred to in Paragraph 2 hereof, immediately discontinued the use of advertisements in which articles made from nitrated cellulose or pyroxylin plastic sometimes known commercially as celluloid, pyralin, etc., were described as "White Ivory" or "Ivory," and has not since said date made use of advertisements which contained the same or similar descriptive matter concerning articles offered for sale and sold by him.

PAR. 4. That on May 17, 1920, at a conference of representatives of the manufacturers of and dealers in various basic materials sometimes known commercially as "Celluloid," "Pyralin," etc., and manufacturers of and dealers in various articles made from such basic materials, which conference was called by the Federal Trade Commission to meet at its offices in Washington, D. C., a resolution was passed at such conference which condemned the use, as applied to articles made from said basic materials, of the following and similar terms: "French Ivory," "Parisian Ivory," "Tortoise Shell" "Ivory Combs," "Florentine Shell" "Ivory Toilet Sets," "Pyralin Ivory," "Jade Necklaces," "Coral Necklaces," "American Ivory," etc.

Order.

4 F. T. C.

CONCLUSION.

That the practices of the respondent, under the conditions and circumstances set out in the foregoing findings as to the facts, constituted an unfair method of competition in commerce in the District of Columbia, and were in 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 thereto and an agreed statement of facts filed herein, and the Commission having made its report in which it stated 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, A. Lisner, trading under the name and style of Palais Royal, his agents, representatives, servants, and employes, do cease and desist from directly or indirectly:

Causing advertisements to be published in newspapers, or making use of other forms of advertising matter, as a means of bringing to the attention of the purchasing public, commodities offered for sale or sold by him in the District of Columbia, which advertisements or advertising matter described as "White Ivory" or "Ivory," articles so offered for sale or sold by him and made of nitrated cellulose or of pyroxylin plastic, sometimes known commercially as "Celluloid," "Pyralin," etc.

It is further ordered, That the said respondent, A. Lisner, trading under the name and style of Palais Royal, shall within sixty (60) days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

ROCHESTER TAILORING CO. (M. NAGELBERG ET AL.). 309

Complaint.

FEDERAL TRADE COMMISSION

v.

M. NAGELBERG AND E. FEIGENBAUM, PARTNERS STYL-
ING THEMSELVES ROCHESTER TAILORING CO.