

Complaint.

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FEDERAL TRADE COMMISSION

v.

LEE CANFIELD, P. E. CANFIELD, AND GEO. B. SHALER,
PARTNERS, STYLING THEMSELVES THE BEST OIL
CO., AND M. E. CORNELL.

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

Docket 712—June 30, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of oils under its trade names, marks, and brands of Mobiloil, Arctic, etc., and a pictured gargoyle, and in the sale of various grades of its oils under the designations Mobiloil "A", Mobiloil "BB", etc., at large expense advertised and sold its products (often referred to and called for by purchasers as "Mobile Oil" or mobile oil "A", etc.) under said trade names, marks and brands, so that its said products as so advertised and sold had come to be well and favorably known and it had acquired a valuable good will therein; and thereafter a competitor,

(a) Designated, advertised and sold its products as Mobile "A", Mobile "B", Arctic, etc.; and

(b) Placed said names and brands on all its containers; and

Where a traveling salesman and sales manager of said competitor, in soliciting the sale of said competitor's product,

(a) Characterized the same as "Mobile Oil" without advising prospective purchasers that said product was not that of said corporation;

(b) Stated when asked whether his oils were those of said corporation, that he had been its chief chemist for many years and that they were exactly the same; and

(c) Suggested to prospective purchasers that they buy his oils, empty the same into containers of said corporation in their possession, and offer them to customers as oils of said corporation:

Held, That such practices, 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 Lee Canfield, P. E. Canfield and George B. Shaler, partners styling themselves the Best Oil Co., and M. E. Cornell, hereinafter referred to as the respondents, have been and are 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 respondents, Lee Canfield, P. E. Canfield and George B. Shaler, are partners, styling themselves the Best Oil Co., with principal place of business at Cedar Rapids, in the State of Iowa, and are now engaged in the business of compounding and selling automobile lubricating oils and greases, and like products, and cause such commodities to be transported to the purchasers thereof, from the State of Iowa through and into other States of the United States, and carry on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That the respondents, Lee Canfield, P. E. Canfield, and George B. Shaler, partners styling themselves the Best Oil Co., in the course of their business, as described in Paragraph 1 hereof, employ as their agent and sales-manager the respondent M. E. Cornell, who at all the times herein referred to has acted in that capacity.

PAR. 3. That for a number of years there has been refined and sold by the Vacuum Oil Co., of Rochester, N. Y., an automobile lubricant which became well known to the trade as "Gargoyle Mobiloil" of various grades, or "Mobiloil A," "Mobiloil B," "Arctic," etc.; that the respondents Lee Canfield, P. E. Canfield, and George B. Shaler, partners styling themselves the Best Oil Co., in the course of their business as described in Paragraph 1 hereof, have compounded products made in imitation of the products of said Vacuum Oil Co. and have designated and labeled such products as "Mobile A," "Mobile B," "Mobile E," "Arctic," etc., in such manner as to cause confusion in the trade, and which labels were calculated to and did mislead the purchasing public to believe that respondents' products were the products of the Vacuum Oil Co.

PAR. 4. That the respondent, M. E. Cornell, prior to his employment by the other respondents herein, was in the employ of the Vacuum Oil Co., and in the course of such employment came into the possession of valuable trade secrets and other knowledge of and concerning the business and products of said Vacuum Oil Co., which enabled him to imitate the products and labels of that company as set out in Paragraph 3 hereof; and said respondent, M. E. Cornell, in the course of his employment by the other respondents herein, as aforesaid, has stated to purchasers and prospective purchasers of respondents' products, that such products were exactly the same as the products of the Vacuum Oil Co. as to viscosity, fire, flash and cold tests and were made from the same raw material,

and suggested to purchasers of respondents' products that they put same in the containers of the Vacuum Oil Co.'s products, in order that they might thereby pass same off as and for the products of said Vacuum Oil Co. at the prevailing prices of the Vacuum Co.'s products, which were materially higher than the prevailing prices for respondents' products made in imitation thereof; and said respondent further stated that as there was no difference between respondents' products and those of the Vacuum Oil Co. that customers would be just as well pleased with respondents' products as with those of the Vacuum Co., and respondents' products could be sold at greater profit than could those of the Vacuum Co.; that to other customers and prospective customers said respondent stated that the products sold by him, as aforesaid, were genuine "Mobile Oils" thereby causing such customers and prospective customers to believe that such products were those of the Vacuum Oil Co., and by thus creating the false and erroneous impression as to the origin of the products sold by him, was able to and did sell respondents' products as and for those of the Vacuum Oil Co.

PAR. 5. That by reason of the facts recited, the respondents are 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, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondents Lee Canfield, P. E. Canfield and Geo. B. Shaler, charging them with unfair methods of competition in violation of the provisions of the said Act of Congress.

The respondents having entered their appearance by their attorneys, and filed their answers, and testimony having been submitted by the Commission and by the respondents before an Examiner of the Commission heretofore duly appointed, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. At the time of the commencement of this proceeding, the respondents, Lee Canfield, P. E. Canfield, and George B.

Shaler, all of Cedar Rapids, Iowa, were partners doing business under the firm name of Best Oil Co., and in 1918 they took over the business of a corporation of the same name which had existed since 1912. That corporation and the partnership which succeeded it were engaged in the manufacture and sale of lubricating oils and the principal office and place of business of the partnership as well as of the corporation which preceded it was located at Cedar Rapids in the State of Iowa. The other respondent, M. E. Cornell, is not a member of the partnership nor a stockholder in the corporation which formerly controlled the business and his connection with the respondent, The Best Oil Co., was that of a commission salesman and as such he entered the employment of this partnership in May, 1918. He had previously been employed for some years by the Vacuum Oil Co., a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 61 Broadway, New York City. This corporation is also engaged in the manufacture and sale of lubricating oils and has been engaged in such business for many years past.

PAR. 2. The respondent, Best Oil Co., as well as Vacuum Oil Co., have sold the lubricating oils manufactured by them respectively, and caused the same to be transported from their respective factories to and among the several States of the United States, in active competition with each other for many years past. Each employed traveling salesmen, advertised their products extensively, and established and maintained branch offices for the sale and distribution of their product in many States of the Union.

On the 1st day of June, 1921, the Best Oil Co., a partnership, was dissolved and as such discontinued business and was succeeded by Best Oil & Refining Co., a corporation incorporated under the laws of Iowa, with its headquarters at Cedar Rapids, Iowa, which corporation is owned, managed and controlled by the same parties who owned, managed and controlled said partnership, viz: Lee Canfield, P. E. Canfield and George B. Shaler.

PAR. 3. At the time that M. E. Cornell entered the employment of Best Oil Co., and, previous to that time for some years past, Best Oil Co., in addition to selling and transporting in interstate commerce the lubricating oils manufactured by it, also acted as sales agent or jobber for the product of the Vacuum Oil Co. and advertised and sold its lubricating oils in many sections of the country.

PAR. 4. The Vacuum Oil Co. has sold its oils under certain well known trade names and trade-marks for many years past and under these trade names and trade marks has expended large sums of

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money in advertising its product so that its products are well known under brands, trade names and trade marks designating the different grades of oils manufactured and sold by it. Some of these brands have been registered in the United States patent office and have been certified by the Commissioner of Patents as registered trade-marks which the Vacuum Oil Co. is authorized to use in advertising and selling its lubricating oils. Among these certified registered trade-marks are the following: "MOBILLOIL," "ARCTIC," "ZETA," "GARGOYLE." The said Vacuum Oil Co. also registered as its trade-mark, the picture of a mythical animal which it called "Gargoyle." These trade-marks, trade names and brands are stenciled on the casks, cans, barrels and other containers in which the Vacuum Oil Co. sells and markets its products. These trade-marks and trade names also appear in newspaper advertisements, posters, pamphlets, circulars, letterheads, and many other methods of advertising to familiarize the general public with the trade-marks, names and brands under which the Vacuum Oil Co. sells and markets its products.

PAR. 5. In addition to the trade-marks and brands set out and described in the preceding paragraph, the Vacuum Oil Co. designates certain grades of its lubricating oils by the use of certain letters of the alphabet or words, and advertises and sells its oils under the name of "Mobiloil," "A," "BB," "E," "C," "CC," and "ARCTIC."

PAR. 6. On account of the fact that the Vacuum Oil Co. has for a long time used and employed certain letters of the alphabet, as set out in the preceding paragraph, to designate the grade or quality of its lubricating oils, the general public as well as dealers in lubricating oils and persons operating garages and other places where lubricating oils are used or sold, have come to refer to "Mobiloil," the product of the Vacuum Oil Co., as though it were spelled "m-o-b-i-l-e-o-i-l," designating the grade or quality desired by letters of the alphabet, as set out in the preceding paragraph.

PAR. 7. In a great many instances garage men and dealers in lubricating oils in ordering the same by letter from the Vacuum Oil Co. refer to its "Mobiloil" as "Mobile Oil," and many owners of private automobiles, among them college professors, army officers, and other well educated and intelligent persons have, when they wished to buy "Mobiloil" manufactured by the Vacuum Oil Co., called for "Mobile Oil"—designating it by certain letters of the alphabet or by the word "arctic" or some other word or symbol employed by the Vacuum Oil Co. to designate the particular grade of its lubricating oils desired.

PAR. 8. When M. E. Cornell entered the employment of Best Oil Co. in 1918, he was familiar with the business of the Vacuum Oil Co. and acquainted with its brands, trade-marks, trade names and its different grades of lubricating oils. He was also familiar with the fact that the general public knew the product of the Vacuum Oil Co., sold under the name of "Mobiloil," as "Mobile Oil," and often referred to it as such and that the Vacuum Oil Co. had for many years used certain letters of the alphabet and the word "arctic" to describe and designate its different grades of lubricating oils. Said Cornell had obtained this knowledge as to the names, brands and grades of lubricating oils sold by the Vacuum Oil Co. while he was employed by the Vacuum Oil Co. as a traveling salesman. Said Cornell also knew that the product of the Vacuum Oil Co. was well known and widely popular throughout the country, and that this company enjoyed a very large trade and did an immense business, marketing its entire product under the names, brands and trade-marks set out in the preceding paragraphs.

PAR. 9. When the said M. E. Cornell entered the employment of Best Oil Co., in the early part of 1918, he was employed as sales manager; he also acted as a traveling salesman for said company. In a very short time after said Cornell began his connection with Best Oil Co., the names of the different grades of oil manufactured and sold by Best Oil Co. were changed and a list of trade names adopted to designate its different grades of oil which names very closely simulated the trade-marks, trade names and brands which had been in use for many years by the Vacuum Oil Co., and the Best Oil Co. immediately began to advertise and call the different grades of oil manufactured and sold by it as "mobile" "A," "B," "E," and "Arctic," stenciling and placing said names, brands and letters on the casks, barrels and containers in which said oil was sold and marketed and using said names and brands on all its advertising matter. The use of all the names and brands which had been formerly used by it to designate its different grades of lubricating oils was thereupon discontinued. The names and brands first used by said Best Oil Co. were entirely dissimilar to the names, brands and marks used by the Vacuum Oil Co.

PAR. 10. During the time that M. E. Cornell represented the Best Oil Co. as sales manager and as traveling salesman, he always approached dealers for the purpose of selling them the product manufactured by Best Oil Co., referring to it as "Mobile Oil," and did not refer to the fact that the oil offered by him was not manufactured by the Vacuum Oil Co. In many instances said Cornell was questioned directly as to whether the oils offered by him were those of the Vacuum Oil Co., and he stated that he had been the

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Chief Chemist of the Vacuum Oil Co. for many years and that the products of the Best Oil Co. were exactly the same as that of the Vacuum Oil Co.; that they were manufactured from the same crudes, and that the physical tests, such as viscosity, fire, flash and cold test, etc., were identically the same as the Vacuum Oil Co.'s product.

PAR. 11. The said M. E. Cornell on other occasions admitted that the oils offered for sale by him were not those of the Vacuum Oil Co. but suggested to prospective purchasers that they buy their oils of the Best Oil Co., empty them into the containers which they had on hand, procured from the Vacuum Oil Co. and offer these oils to their customers as those of the Vacuum Oil Co., stating that, inasmuch as there was no difference in the oils, the customers would be just as well satisfied, and reminding them that he was offering the product of the Best Oil Co. to them cheaper than they could buy the product of the Vacuum Oil Co.

CONCLUSION.

Under the conditions and circumstances set out in the foregoing findings of facts, the acts, policies and practices of the respondents, each and all of them, constitute unfair methods of competition in interstate commerce, contrary to Section Five of the Federal Trade Commission Act, approved September 26, 1914.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the pleading and the testimony and evidence received by an examiner duly appointed by the Commission and the Commission having made its findings as to the facts and its conclusion that the respondents have 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," which report is hereby referred to and made a part hereof.

Now, therefore, it is ordered, That the respondents, Lee Canfield, P. E. Canfield and George B. Shaler, of Cedar Rapids, Iowa, individually, and as copartners under the firm name of Best Oil Co., and M. E. Cornell of Cedar Rapids, Iowa, their agents, officers and servants, cease and desist from, directly or indirectly, (1) imitating the brands, symbols, trade names, trade-marks or other characters used by the Vacuum Oil Co. to designate the grades or brands of lubricating oils manufactured and sold by it; (2) from using the words "Mobile Oil" separately or in conjunction with the word "arctic" or in conjunction with any letter or letters of the alphabet

as a name to designate a grade of his or their product, or for any other purpose in connection with the manufacture and sale of lubricating oils; (3) from claiming or representing by any writing, printing, pictures or by oral statement that the oil produced and sold by him or them is the same as that produced and sold by the Vacuum Oil Co.; (4) from counseling or advising any person or any dealer to place the oils manufactured and produced by them in containers of the Vacuum Oil Co. for the purpose of leading the public into the belief that his or their product is in fact the product of the Vacuum Oil Co.; (5) from claiming or stating that M. E. Cornell was ever employed as a chemist by the Vacuum Oil Co.

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FEDERAL TRADE COMMISSION DECISIONS.

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