

Complaint.

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FEDERAL TRADE COMMISSION

v.

WILLIAM E. HINCH.

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

Docket 818—July 3, 1922.

SYLLABUS.

Where an individual engaged in the manufacture and sale of roofing paints and in the sale of a general line of paints, stains, enamels, varnishes, and other commodities manufactured by others,

- (a) Advertised a certain varnish offered by him as "GOVERNMENT SPAR VARNISH, Highest Grade; Outside Manufacture; Used in Finest Homes for inside and Outside Work; Actual Value \$6. Will Sell While it Lasts, \$1.00 a Quart; \$1.75 One-half Gallon; \$3 a Gallon," and an enamel as "Government White Ship Enamel," the fact being that the varnish and enamel so advertised were not made for the Government or in accordance with Government specifications, but were among the cheapest grades of varnishes and enamels manufactured;
- (b) Falsely advertised a paint offered by him as "procured from the United States Government Plant at Nitro, West Virginia. This material was manufactured by George D. Wetherill according to Army Specifications W. D. 37. We are going to close this out at one-third the regular cost to manufacture;" and
- (c) Advertised a paint offered by him as "Priming Fence Paint; \$1.50 per gallon. First class paint for fences or rough work. Same grade of paint sold under name of house paint round the city at \$2.50 and \$3.00," the fact being that the paint so advertised and offered was not priming fence paint, nor sold as house paint in the city referred to at \$2 and \$3 per gallon;

With the capacity and tendency to deceive and mislead the purchasing public as to the value or utility of the commodities so advertised and with the effect in some instances of so doing and of thereby inducing the purchase thereof;

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 William E. Hinch, 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 respondent is engaged at Philadelphia, Pennsylvania, in the business of selling a general line of paints, stains, enamels, varnishes, etc., manufactured by others, and of manufacturing and selling roofing paints. Respondent causes a substantial portion of the paints and other commodities sold by him to be transported to the purchasers thereof from the State of Pennsylvania through and into other States of the United States, and carries on his business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That respondent, in the course of his business as described in Paragraph 1 hereof, and as an inducement to prospective customers, causes advertisements to be inserted in newspapers of general circulation in the States of Pennsylvania, New Jersey, and Delaware, which advertisements describe certain varnish, offered for sale and sold by him, as "GOVERNMENT SPAR VARNISH, Highest Grade; outside manufactured; used in finest homes for inside and outside. Actual value of \$6. Will sell while it lasts \$1.00 Quart; \$1.75 $\frac{1}{2}$ gallon; \$3.00 Gallon," and certain enamel, offered for sale and sold by him, as "GOVERNMENT WHITE SHIP ENAMEL." That respondent causes the containers for said varnish to be labeled and branded "GOVERNMENT SPAR VARNISH" and the containers for said enamel to be labeled and branded "GOVERNMENT WHITE SHIP ENAMEL," and represents to customers and prospective customers that the varnish and enamel were made for the Government of the United States, or according to some formula, specification, or requirement of the Government of the United States, whereas, in truth and in fact and as respondent well knows, the varnish so advertised, labeled, branded, and represented is not a high grade varnish but is one of the manufacturer's lowest grades of spar varnish and is not suited for inside work because it is a long-oil varnish, slow in drying and not hard wearing, costing respondent about \$2.00 per gallon, and is not valued at or worth \$6.00 per gallon; and neither the varnish nor enamel so advertised, labeled, branded and represented was procured from the Government of the United States or made for or according to any specification, formula, or requirement of the Government of the United States or any branch or department thereof. That the use of the word "Government" in connection with varnish and enamel, as aforesaid, is calculated to, and actually does, lead the public to believe that the Government of the United States has had some connection with the varnish and enamel so labeled, branded, represented, and advertised, and that,

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therefore, the varnish and enamel are a high-grade varnish and enamel because they have complied with the requirements and tests of said Government. That said advertisements, labels, brands, and representations are false and misleading and are calculated to, and actually do, deceive and mislead purchasers as to the quality and value of said varnish and enamel.

That respondent advertises, as described above, a paint offered for sale and sold by him, as "PRIMING FENCE PAINT, \$1.50 a gallon. First-class paint for fences or rough work, same grade of paint sold under name of house paint around the city at \$2.50 and \$3.00"; whereas, in truth and in fact and as respondent well knows, said paint is not a first-class priming paint and is not sold around the City of Philadelphia under the name of house paint at \$2.50 and \$3.00 per gallon. That, therefore, said advertisements are false and misleading and are calculated to, and actually do, mislead and deceive purchasers as to the quality of such paint.

That respondent further advertises, as described above, a paint, offered for sale and sold by him, and so labels and brands the containers for said paint and so represents it to customers and prospective customers as a "paint procured from the U. S. Government plant at Nitro, W. Va. This material was manufactured by George D. Wetherill, according to Army Specification W. D. 37. We are going to close this out at one-third original cost to manufacturer. 5 Gallon Cans, \$1.00 Gallon, 1 Gallon Cans, \$1.25 Gallon"; whereas, in truth and in fact and as is well known to respondent, said paint does not approximate the paint so specified, and the paint sold by the manufacturer named to the United States Government plant at Nitro, West Virginia, was sold by the manufacturer at \$1.09½ per gallon, which price represented a reasonable profit to the manufacturer. That, therefore, such advertisements, labels, brands and representations are false and misleading and are calculated to, and actually do, deceive and mislead purchasers as to the quality and value of said paint.

PAR. 3. That the respondent, in the course of his business, as described in Paragraph 1 hereof, has made use of office stationery, billheads, invoices and stickers which he places upon the containers of commodities sold by him, which contain statements to the effect that the respondent is a manufacturer and jobber, whereas, in truth and in fact, respondent does not manufacture the commodities sold by him, except roofing paints which constitute only a small proportion of the volume of business done by him, and respondent is not a jobber or wholesaler of paints, varnishes, etc., but sells only at retail

to the ultimate consumer. That such statements are false and misleading and are calculated to, and actually do, deceive and mislead the public into the belief that when it buys from respondent it is purchasing at prices below those at which the ordinary retail dealer in paints, varnishes, enamels, etc. sells and to lead manufacturers of paints, varnishes, enamels, etc. to sell to respondent at lower prices than they sell to the ordinary retail dealer in the belief that respondent is a wholesaler and jobber of paints, varnishes, enamels, etc.

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, William E. Hinch, 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 there is stipulated and agreed by the 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 with such agreed statement of facts to make its findings and such order as it may deem proper to enter therein, 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 report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, William E. Hinch, is engaged in Philadelphia, Pennsylvania, in the business of selling a general line of paints, stains, enamels, varnishes, and other commodities, manufactured by others, and manufacturing and selling roofing paints, and the respondent causes a portion of the paints, varnishes, enamels, and other commodities sold by him to be transported to the purchasers thereof from the State of Pennsylvania through and into the other States of the United States and carries on his business in direct and active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondent, William E. Hinch, in the course and conduct of his business, as described in paragraph 1 hereof,

Findings.

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caused certain advertisements to be inserted in the newspapers of general circulation in the States of Pennsylvania, New Jersey, and Delaware, as a means of bringing to the attention of the purchasing public the merchandise and commodities offered for sale and sold by him. That the respondent advertised certain varnishes and enamels so offered for sale and sold by him, which commodities were described in said advertisement as "GOVERNMENT SPAR VARNISH, Highest Grade; Outside Manufacture; Used in Finest Homes for Inside and Outside Work; Actual Value \$6.00. Will Sell While it Lasts, \$1.00 Quart; \$1.75 a Half Gallon; \$3.00 a Gallon"; which advertisement so published by respondent was false and untrue, as said varnishes were not made under any formula of the United States Government or any department thereof and were among the cheapest grades of varnishes and enamels manufactured. That the advertisement "Government Spar Varnish" and "Government White Ship Enamel" had the tendency and capacity to mislead and deceive the purchasing public by creating in the minds of the purchasing public a false and erroneous belief concerning the value, quality or utility of said commodity and in some instances induced the said purchasing public to purchase said commodities upon the mistaken belief that such commodities were made for the Government of the United States or some department thereof, or were manufactured under the formula, specifications or requirements of the Government of the United States, or some department thereof.

PAR. 3. That the word "Government" when applied to paints, varnishes or enamels is understood by the general public to mean varnish, enamel or paint obtained from the Government of the United States or manufactured especially for its use or made in accordance with some specification, formula or requirement of such Government of the United States, or that it had been approved by the said Government; that the general purchasing public believes varnish, enamel or paint with which the United States Government has been in any way connected is of an unusual high grade or quality because approved by such Government.

PAR. 4. That the respondent advertised, as described in Paragraph 2 above, a paint offered for sale and sold by him as "Priming Fence Paint; \$1.50 per gallon. First Class Paint for Fences or Rough Work. Same Grade of Paint Sold Under Name of House Paint Around the City at \$2.50 and \$3.00." That such advertisement was false and misleading and had both the tendency and capacity to deceive for the reason that the paint above described was not sold around the city of Philadelphia under the name of house paint at \$2.50 and \$3.00 per gallon and that same was not "Priming Fence

Paint," and that the advertisement so published by the respondent had the capacity and tendency to mislead and deceive the purchasing public by creating in the minds of the public false and erroneous beliefs concerning the value and utility of said paints and in some instances induce the public to purchase said paint upon such mistaken beliefs as aforesaid.

PAR. 5. That the respondent advertised, as described in Paragraph 2 above, a paint offered for sale and sold by him as paint "procured from the United States Government Plant at Nitro, West Virginia. This material was manufactured by George D. Wetherill according to Army Specifications W. D. 37. We are going to close this out at $1/3$ the original cost to manufacture." That such paint described in such advertisement as set out above and sold by respondent was not manufactured by George D. Wetherill according to Army Specifications W. D. 37; that the paint sold by the manufacturer named to the United States Government Plant at Nitro, West Virginia, was sold by the manufacturer at \$1.09 $\frac{1}{4}$ ¢ per gallon, which price represented a reasonable profit to the manufacturer; that the general purchasing public believes paints so advertised, labeled, branded and represented to be of the grade, quality, and value represented in such advertisement, label, brand or representation and to be paint procured from the United States Government Plant at Nitro, West Virginia, and manufactured by George D. Wetherill according to Army Specifications W. D. 37 at a cost of \$3.00 per gallon; that the reference to such paint in said advertisement as set out above 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 said paint and in some instances to induce the public to purchase said articles upon the mistaken belief that said articles were of the kind and quality described in the aforesaid advertisements.

CONCLUSION.

That the practices of respondent, under the conditions and circumstances set out in the foregoing findings as to the facts, constituted an unfair method of competition in commerce and were 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."

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 re-

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spondent 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, William E. Hinch, his agents representatives, servants and employes, do cease and desist; directly or indirectly, from employing or using, or permitting to be used in his behalf, the word "government" standing alone or in conjunction with other word or words, in connection with the sale or distribution of varnish, enamel or paint, or in the advertisements thereof, *except* (1) when the varnish, enamel or paint has been obtained from the United States Government; or (2) when the varnish, enamel or paint has been manufactured for and accepted by the United States Government; or (3) when the varnish, enamel or paint has been made in accordance with some United States Government formula, specification or requirement, and the word or term indicating 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, enamel or paint 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, enamel or paint has been manufactured for and accepted by some government other than the United States Government, and the term or terms used to indicate government is joined or used with some other word or term indicating the government for which the varnish, enamel or paint was manufactured and by which it was adopted (e. g., Canadian Government Spar Varnish); or, (6) when the varnish, enamel or paint 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, enamel or paint has been manufactured (e. g., made in accordance with specifications of the Italian Government);

From publishing and circulating, or causing to be published and circulated throughout the various States of the United States, the territories thereof, the District of Columbia and foreign countries, advertisements, circulars, folders, letters or any other printed or written matter whatsoever, wherein it is falsely stated, set forth or held out to the public.—

1. That the paint offered for sale and sold by the respondent is "Priming fence paint, \$1.50 per gallon. First-class paint for fences or rough work. Same grade of paint sold under name of 'house paint' around the city at \$2.50 and \$3."

2. That respondent's products were purchased from the United States Government's plant at Nitro, West Virginia, or words to that effect.

It is further ordered, That the respondent, William E. Hinch, shall, within sixty (60) days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

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FEDERAL TRADE COMMISSION DECISIONS.

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