

Complaint.

FEDERAL TRADE COMMISSION

v.

MORRIS KLEIN, DOING BUSINESS UNDER THE NAME
AND STYLE OF RACINE TIRE SALES COMPANY.

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

Docket 874—December 27, 1922.

SYLLABUS.

Where a corporation engaged as the Racine Rubber Co. in the manufacture and sale of automobile and other tires, including a tire which it termed its "Multi-Mile Cord" tire and nationally so advertised, registered the names "Multi-Mile Cord" and "Racine" as applied to its tires, branded its tires with its corporate name, sold and extensively advertised the same thereunder, and thereby and through the reputation which came to be attached to its products as so identified, built up and acquired a valuable trade and good will under the word "Racine" which through continuous and uninterrupted use by it had come to indicate to the public tires of high quality made by it; and thereafter a competitor engaged in the business of rebuilding and repairing second hand and used tires, and in selling the same by mail order, without stating in his advertising, except in small type, that said tires were used or rebuilt;

- (a) Adopted and used the name Racine Tire Sales Co. in the conduct of his aforesaid business; and
- (b) Named one of the tires so repaired, rebuilt and offered by him "Multi Cord" and so advertised the same, prominently displaying in so doing the trade name adopted and used by him as above set forth;

With the capacity and tendency thereby to deceive and mislead the public into believing the tires so offered by him to be the "Multi-Mile Cord" tires of said corporation and thereby to induce the purchasing public to buy his tires as and for such tire of said corporation:

Held, That such simulation of corporate and trade names, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

AMENDED COMPLAINT.

Acting in the public interest 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 charges that Morris Klein, doing business under the name and style of Racine Tire Sales Company, 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 said Act, and states its charges in that respect as follows:

Complaint.

5 F. T. C.

PARAGRAPH 1. That the respondent, Morris Klein, is one of three partners of which his father and one brother are the other two, all three of whom, under the firm-name and style of J. Klein & Sons, are now, and for some years last past have been doing business as junk dealers in rags, rubber and metals at 1001 West 21st Street, Chicago, Illinois: That for some years previous to and until October, 1920, the respondent, at the above mentioned 1001 West 21st Street, also did business as an individual under the name of the Universal Tire and Rubber Company: That about that date and because of complaints and objections on the part of a corporation in the same city known as the Universal Tire and Repair Company, Inc., to his use of and his transaction of business under the name of the Universal Tire and Rubber Company, he abandoned the use of that name, adopted the name of the Racine Tire Sales Company, and moved the fabricating portion of his business to an old frame structure at number 2106 South Racine Avenue about three blocks from the office portion of his business at 1001 West 21st Street above mentioned where all mail is still received.

PAR. 2. That the business of the respondent, Morris Klein, under the name of the Racine Tire Sales Company, is that of rebuilding and repairing second hand and used tires and thereafter reselling said reconstructed tires to the consuming public in the manner herein set out: That he causes to be inserted in newspapers and other publications of national and State circulation advertisements in which he solicits direct from the consumer mail orders for said reconstructed tires. He also sends, throughout the various States of the Union, circulars in which he solicits the same sort of business: That in said advertisements and said circulars the respondent does not in any manner disclose, unless in small type, the fact that the tires so offered for sale by him are second hand or used tires or rebuilt or reconstructed tires as above set out: That upon receiving orders as a result of said advertisements and circulars the respondent causes the tires so purchased to be shipped from his said place of business in the city of Chicago into and through the various States of the United States to the purchasers at their several places of residence in the various States of the United States: That in the course and conduct of his said business the respondent is in competition with other persons, partnerships and corporations engaged in selling automobile tires in interstate commerce and with the trade generally.

PAR. 3. That among the aforesaid competitors of the respondent is the Racine Rubber Company, a corporation organized in March,

1910, under the laws of the State of Wisconsin, as the Kelly-Racine Rubber Company: That its name was changed to its present title on August 5, 1912: That by its charter it is empowered to manufacture, sell and distribute and it does manufacture, sell and distribute all kinds of new tires, including automobile, truck, bicycle and motorcycle tires: That its office and factory and principal place of business are located at Racine, Wisconsin: That at first its business was small but this has steadily increased until at the present time it is now one of the large manufacturers of tires in the world: That its product is sold and distributed to purchasers throughout the United States and to a large extent abroad: That the tires so sold by it are transported from its said place of business at Racine, Wisconsin, into and through the various States of the United States to said purchasers therein.

PAR. 4. That amongst the tires manufactured by the Racine Rubber Company is a tire named by said company "Multi-Mile Cord" under which name the said tire has for more than a year last past been nationally advertised and sold by the said company throughout the United States and the consuming public has come to identify it, and it does now identify the said tire with the name "Multi-Mile Cord" with the name of its manufacturer, the Racine Rubber Company.

PAR. 5. That the Racine Rubber Company has acquired a high reputation for materials, durability and workmanship: That ever since its organization the Racine Rubber Company has spent thousands of dollars yearly in nationally advertising its tires and this advertising has all been done as the advertisement of the Racine Rubber Company under that name: That by said reputation and by said advertising and by other means it has built up and established a valuable good-will and trade, and has established a wide popularity and demand for its tires amongst the consuming public throughout the United States, which popularity and demand for its products it now enjoys: That owing to this high reputation of its product this business good-will is of incalculable value.

PAR. 6. That its name, the Racine Rubber Company, was recorded in the United States Patent Office Department under the Act of Congress of 1905: That the words "Racine-Multi-Mile Cord" used in connection with tires of its manufacture were registered by said Racine Rubber Company in the United States Patent Office on August 16, 1921, and numbered by said Office No. 145,788 That the word "Racine" used in connection with tires of its manufacture was by said Racine Rubber Company registered in the United States Patent Office, on February 22, 1921, and numbered by said Office No.

Complaint.

5 F. T. C.

139,953: That the words "Racine Country Road," used in connection with tires of its manufacture were registered by the said Racine Rubber Company, in the United States Patent Office on January 26, 1921, and by said Office numbered No. 145,181: That notice that the Racine Rubber Company is the manufacturer of its products has been given to the purchasing public by stamping its full corporate name on all tires of its manufacture: That the result and the effect upon the purchasing public of all these things and by its said advertising has been that the word and name Racine when applied to tires has by said public become identified and associated with the Racine Rubber Company: That the word Racine has been so used in commerce throughout the United States with the business of the Racine Rubber Company as to indicate not only the place, to wit, Racine, Wisconsin, of the manufacture and product, but the Racine Rubber Company itself, together with the excellence of the tires of its manufacture: That the Racine Rubber Company has made such continuous and uninterrupted use of the word "Racine," as a part, of its trade and of its corporate name, for such a long period of years, as to indicate to the public the place, character, quality and product of the Racine Rubber Company and for the general advertisement thereof.

PAR. 7. That amongst the repaired and rebuilt tires offered for sale by respondent, in the manner hereinbefore set out, was and is one which the respondent named "Multi-Cord" and in his aforesaid advertisements respondent has heretofore offered and still offers said "Multi-Cord" tires for sale under that name. In addition to the name "Multi-Cord," said advertisements prominently display the aforesaid trade name of respondent. The use of the name "Multi-Cord" by respondent in connection with the trade name, Racine Tire Sales Company and the advertising of said tires for sale in connection with said trade name, as hereinbefore set out, have the capacity and tendency to deceive and mislead the public into the belief that the rebuilt tires offered by respondent under the name "Multi-Cord" are the "Multi-Mile Cord" tires manufactured by the Racine Rubber Company, and therefore have the tendency and the capacity to induce the purchasing public to purchase respondent's said tires in the belief that the same are the aforesaid "Multi-Mile Cord" tires manufactured by said Racine Rubber Company.

PAR. 8. That the above alleged acts and things done by respondent constitute 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 its complaint upon the respondent, Morris Klein, doing business under the name and style of Racine Tire Sales Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondent having entered its appearance and filed its answer herein, a statement of facts was agreed upon by counsel for the Commission and counsel for respondent, to be taken in lieu of evidence.

And thereupon this proceeding came on for final hearing and the Commission having duly considered the record and 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, Morris Klein, on or about October, 1920, adopted the name of Racine Tire Sales Company and conducted the fabricating portion of his business as hereinafter set forth, in an old frame structure at 2106 S. Racine Avenue, Chicago, Illinois, about three blocks from the office portion of the business of J. Klein Sons, Inc., at 1001 West 21st Street, Chicago, Illinois, where all mail is received by the respondent.

PAR. 2. That the business of the respondent, Morris Klein, under the name of the Racine Tire Sales Company, is that of rebuilding and repairing second-hand and used tires, and thereafter re-selling said reconstructed tires to the consuming public in the manner herein set out; that he causes to be inserted in newspapers and other publications of national and State circulation, advertisements in which he solicits direct from the consumer mail orders for said reconstructed tires. He also sends throughout the various States of the Union, circulars, in which he solicits the same sort of business; that in said advertisements and said circulars the respondent does not in any manner disclose, except in small type, the fact that the tires so offered for sale by him are second-hand, or used tires, or rebuilt, or reconstructed tires, as above set out. That upon receiving orders as the result of said advertisements and circulars, the respondent causes the tires so purchased to be shipped from his said place of business in the City of Chicago, into and through the various States of the United States to the purchaser at their several places of residence in the various States of the United States. That in the course and conduct of his said business, the respondent is

Findings.

5 F. T. C.

in competition with other persons, partnerships and corporations engaged in selling automobile tires in interstate commerce, and with the trade generally.

PAR. 3. That among the aforesaid competitors of the respondent is the Racine Rubber Company, a corporation organized in March, 1910, under the laws of the State of Wisconsin, as the Kelly-Racine Rubber Company; that its name was changed to its present title on August 5, 1912; that by its charter it is empowered to manufacture, sell and distribute, and does manufacture, sell and distribute all kinds of new tires, including automobile, truck, bicycle and motorcycle tires; that its office and factory and principal place of business are located at Racine, Wisconsin; that at first its business was small, but it has steadily increased until at the present time it is one of the large manufacturers of tires in the United States; that its product is sold and distributed to purchasers throughout the United States, and to a large extent abroad, and that the tires so sold by it are transported from its said place of business at Racine, Wisconsin, into and through the various States of the United States to said purchasers therein.

PAR. 4. That amongst the tires manufactured by the Racine Rubber Company is a tire named by said Company, "Multi-Mile Cord," under which name the said tire has been, for more than a year last past, nationally advertised and sold by the said company throughout the United States, and the consuming public has come to identify, and does now identify the said tire with the name "Multi-Mile Cord," with the name of its manufacturer, the Racine Rubber Company.

PAR. 5. That the Racine Rubber Company has acquired a high reputation for materials, durability and workmanship, and has expended a great deal in advertising its business; that by said reputation and said advertising and by other means, it has built up and established a valuable good-will and trade, and has established a wide popularity and demand for its tires among the consuming public throughout the United States, which popularity and demand for its product it now enjoys.

PAR. 6. That its name, the Racine Rubber Company, was recorded in the United States Patent Office Department under the Act of Congress of 1905; that the words "Racine Multi-Mile Cord," used in connection with tires of its manufacture were registered by said Racine Rubber Company in the United States Patent Office, on August 16, 1921, and numbered by said office No. 145,788; that the word "Racine" used in connection with tires of its manufacture was by said Racine Rubber Company registered in the United States Patent

327

Conclusion.

Office on February 22, 1921, and numbered by said office, No. 139,953; that the words "Racine Country Road," used in connection with tires of its manufacture, were registered by the said Racine Rubber Company in the United States Patent Office on January 26, 1921, and by said office was numbered No. 145,181. That notice that the Racine Rubber Company is the manufacturer of its products has been given to the purchasing public by stamping its full corporate name on all tires of its manufacture. That the result and the effect upon the purchasing public of all these things, and by its said advertising, has been that the word and the name "Racine" when applied to tires, has, by said public become identified and associated with the Racine Rubber Company; that the word "Racine" has been so used in commerce throughout the United States with the business of the Racine Rubber Company as to indicate not only the place—to-wit, Racine, Wisconsin—of the manufacture and product, but the Racine Rubber Company itself, together with the excellence of the tires of its manufacture; that the Racine Rubber Company has made such continuous and uninterrupted use of the word "Racine" as a part of its trade and of its corporate name for such a long period of years as to indicate to the public the place, character, quality and product of the Racine Rubber Company and of the general advertisements thereof.

PAR. 7. That amongst the repaired and rebuilt tires offered for sale by respondent in the manner hereinbefore set out, was one which the respondent named "Multi-Cord," and in an aforesaid advertisement respondent has heretofore offered said "Multi-Cord" tires for sale under that name. In addition to the name "Multi-Cord," said advertisements prominently displayed the aforesaid trade name of respondent. The use of the name "Multi-Cord," by respondent, in connection with the trade name, Racine Tire Sales Company, and the advertising of said tires for sale in connection with said trade name as hereinbefore set out, had the capacity and tendency to deceive and mislead the public into the belief that the rebuilt tires offered by respondent under the name "Multi-Cord" are the "Multi-Mile Cord" tires manufactured by the Racine Rubber Company, and therefore had the tendency and the capacity to induce the purchasing public to purchase respondent's said tires in the belief that the same are the aforesaid "Multi-Mile Cord" tires manufactured by said Racine Rubber Company.

CONCLUSION.

The practices of the said respondent under the conditions and circumstances described in the foregoing findings, are unfair methods

Order.

5 F. T. C.

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, the statement of facts agreed on by counsel for the Commission and counsel for respondent, and the Commission having made its findings as to the facts with its conclusion that 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, Morris Klein, doing business under the name and style of Racine Tire Sales Company, his agents, representatives, servants and employees, do cease and desist from using the term "Racine Tire Sales Company."

It is further ordered, That the respondent cease and desist from branding, marking, using or advertising any of the automobile tires manufactured or sold by it under the name "Multi-Cord," or any combination of such words which would indicate to the public that the tires manufactured, repaired or sold by it are the "Multi-Mile Cord" tires manufactured by the Racine Rubber Company of Racine, Wisconsin.

It is further ordered, That the respondent, within thirty (30) days from notice hereof, file with the Commission a report in writing stating in detail the manner in which this order has been complied with and conformed to.


KEATON TIRE & RUBBER CO.

335

Complaint.