

Complaint.

FEDERAL TRADE COMMISSION

v.

AMALGAMATED TIRE STORES CORPORATION.

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

Docket 888—January 9, 1923.

SYLLABUS.

Where a corporation engaged in the distribution and sale of automobile tires, which it secured for the most part from the stocks of bankrupt and financially embarrassed concerns and from surplus tire stocks of the United States Army, and which consisted chiefly of tires known to the trade and general purchasing public as "seconds," falsely represented the same in its advertising as "firsts," "absolute firsts," "strictly firsts," and "all standard makes of firsts," and claimed that "every tire is fresh from the best known factory"; with the effect of misleading and deceiving the purchasing public:

Held, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

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 the Amalgamated Tire Stores Corporation, 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:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Delaware, with its main office and principal place of business in the city of New York, State of New York, and with retail agencies and stores in a number of cities in various States of the United States and in the District of Columbia. At all times hereinafter mentioned, respondent has been and is now engaged in the business of buying and selling and distributing automobile tires in commerce among the several States and in the District of Columbia and between the District of Columbia and States adjacent thereto in the manner more particularly hereinafter set out. In the course and conduct of its said business, respondent is in competition with individuals, partnerships, and corporations similarly engaged.

PAR. 2. That the respondent purchases tires in wholesale quantities at various places in numerous States and in foreign countries

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and concentrates its purchases at its said place of business in the city of New York. The tires thus purchased are secured by it largely from distressed stocks, the stocks of bankrupt or of financially embarrassed concerns, and from the surplus tire stocks of the United States Army. Because of the quantity and character of the stock purchased as above stated the respondent obtains its goods at substantial reductions in prices. Many of the tires bought by the respondent as stated above are "seconds" as the term is known in the automobile trade, or are those which have depreciated in value and in quality. From the stock thus assembled by the respondent at its place of business in New York City it from time to time ships and distributes quantities of tires to its various retail agencies and stores where the same are sold at retail by mail order and otherwise and thence shipped and delivered to the purchasers thereof.

PAR. 3. That in the automobile tire trade, tires are classified as "firsts" and as "seconds," and as "fresh" and "not fresh." Tires classified as "firsts" are such tires as come direct from the manufacturer thereof without substantial defect or blemish and are new or "fresh" in the sense that sufficient time has not elapsed since the date of their manufacture to allow of deterioration through age only. Tires classified in the trade as "seconds" are tires which come from the manufacturer thereof with some imperfection or defect or blemish not sufficient to impair their substantial quality and value, but which lowers their quality and value below that of "firsts," or are such tires as have suffered deterioration through age or exposure.

PAR. 4. That in connection with the sale and distribution through its retail agencies and stores of its stocks of tires the respondent, for more than one year immediately preceding the issuance of this complaint, has from time to time advertised in newspapers and by placards and otherwise, that these tires so advertised were "firsts" or were "absolutely firsts," or were "strictly firsts" and that "every tire is fresh from the best-known factories" or are "guaranteed firsts in original factory wrappings," or were "all standard makes of firsts"; that the tires so advertised or offered for sale were sold by the respondent in and through its said retail agencies and stores at prices substantially below the retail prices generally prevalent for "firsts" and for fresh tires of the same makes in the trade and in the territories of the respondent's retail agencies and stores; that in fact many of the tires so advertised and offered for sale and sold by the respondent were not "firsts" but were "seconds" and were not "fresh" but were, on the contrary, tires more than one year old and deteriorated through age or other cause.

PAR. 5. That the said representations and each and all of them appearing in the said advertisements of the respondent were at all times, and now are, false and untrue; that the said representations had the capacity and tendency to deceive and mislead the purchasing public as to the quality and value of said articles and to induce the said public to purchase the same in the belief that the tires so offered and so advertised for sale by the respondent were actually new, fresh stock and had come direct to the respondent from the factory and were what are known in the trade as "firsts" or "strictly firsts," thereby inducing the public to believe that tires of the advertised quality were being sold by respondent at greatly reduced prices.

PAR. 6. That the above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors and constitute unfair methods 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, Amalgamated Tire Stores Corporation, charging it with 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, and having entered into a stipulation in writing as to the facts, in which stipulation it is admitted that certain of the matters and things alleged in said complaint are true in the manner and form therein set forth, thereupon this proceeding came on for final hearing; and the Commission, being fully advised in the premises and upon consideration thereof, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation created and existing under the laws of the State of Delaware, with its principal office and place of business in the city of New York, State of New York, and with retail agencies in the various States of the United States and in the District of Columbia. Respondent has been and is now engaged in the business of buying, selling, and distributing automobile tires in interstate commerce, and in the course and conduct of its

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said business is in competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. Respondent purchases tires in wholesale quantities from various sources in numerous States of the United States and in foreign countries and concentrates its purchases at its principal place of business in New York City. Such tires purchased in the manner described above are for the most part secured from the stocks of bankrupt or financially embarrassed concerns, and have been in the past purchased from the surplus tire stocks of the United States Army. In purchasing tire stocks in the manner set out above respondent obtains and has obtained such stocks at substantial reduction from the general wholesale price of said tires. A great portion of the tires so bought by respondent are tires known to the automotive tire trade and general purchasing public as "seconds." Respondent, after having assembled such tires at its principal place of business in New York City, ships same from time to time to its various retail agencies at their different places of residence in the various States of the United States and the District of Columbia. Upon receipt of said tires by the retail agencies of respondent such tires are sold and offered for sale to the general purchasing public.

PAR. 3. Tires are graded in two classes by the manufacturers thereof and by the automotive tire trade, and through continued use of the terms of grading have come to be understood by the general purchasing public as belonging to either one or the other of the said two grades. These grades are made with respect to the quality of the tire. The grade known as "firsts" is that grade of tire which is understood by the automotive tire trade and general purchasing public to be tires without substantial defect or blemish and fresh in the sense that sufficient time has not elapsed since the date of their manufacture to allow deterioration from age. Tires designated and classed as "seconds" by the automotive tire trade and general purchasing public are understood to be tires in which there exists some imperfection or blemish not of sufficient importance to substantially impair the quality or value of said tire or tires, or which have, through age, exposure, or for other causes, deteriorated until they are not equal in quality to those tires designated as "firsts."

PAR. 4. Respondent, in the course and conduct of its business, has sold and offered for sale at various times tires which it knew to be "seconds," which tires it advertised as "firsts" in newspapers and by placards and otherwise. In such advertisements respondent used the following terms in the description of said tires, alleging that they were "firsts," or were "absolutely firsts," or were "strictly

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firsts," and that "every tire is fresh from the best-known factories," or were "all standard makes of firsts."

PAR. 5. Said advertisements as set out next above and used with respect to "seconds" were false and misleading and did mislead and deceive the purchasing public into the belief that by purchasing the said tires sold and offered for sale in the manner above described it was obtaining a tire of first quality, when in truth and in fact it was obtaining a tire of "second" quality.

CONCLUSION.

The above practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of Section 5 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 respondent 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, 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, Amalgamated Tire Stores Corporation, its officers, agents, representatives, servants, and employees, do cease and desist from directly or indirectly advertising, selling, or offering for sale in interstate commerce automobile tires as "firsts," or "absolutely firsts," or "strictly firsts," or "every tire is fresh from the best-known factories," or "all standard makes of firsts," unless said tires are in truth and in fact correctly and properly so described.

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

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FEDERAL TRADE COMMISSION DECISIONS.

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