

Complaint.

FEDERAL TRADE COMMISSION

v.

PREMIER ELECTRIC COMPANY.

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

Docket 921—January 18, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of telephone instruments and accessories, a substantial part of which it fabricated by assembling new parts with old, used, or second-hand parts, advertised and offered in its catalogues some but not all of its rebuilt equipment as the product of its "rebuilt equipment department," and thereby misled and deceived the purchasing public into believing that the products of its main department, so offered without disclosure of their true character and at prices substantially below those of competitors for new equipment, were made of new parts only, and thus gained for itself a good will to which it was not entitled:

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 Premier Electric Company, hereinafter referred to as Respondent, has been and is using unfair methods of competition in interstate 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 Illinois with its principal office and place of business in the City of Chicago, in said State. For more than one year last past it has been and still is engaged in the manufacture of telephone instruments and telephone accessories and the sale thereof in interstate commerce, as hereinafter more fully set out. In the course and conduct of its said business, respondent is in competition with other individuals, partnerships and corporations similarly engaged in the manufacture of telephone instruments and accessories and/or the sale thereof in interstate commerce.

PAR. 2. Respondent's method of marketing its said commodities is as follows: It issues catalogs, circulars and other advertising matter,

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pictorially representing and otherwise describing its said telephone instruments and accessories and setting forth the prices thereof, which said catalogs, circulars and other advertising matter it sends to customers and prospective customers at points in various States of the United States. Upon receiving orders for said commodities by said means, respondent fills the same by causing the telephone instruments and accessories so purchased to be transported from its said principal place of business in the City of Chicago into and through other States of the United States to said purchasers.

PAR. 3. A substantial number of the telephone instruments manufactured by respondent are not made of entirely new parts, but are constructed by respondent by assembling some new parts with some old, used and secondhand parts secured by respondent by dismantling used and secondhand telephone instruments purchased by it for that purpose, or secured from other manufacturers or dealers who have dismantled used and secondhand telephone instruments and from whom respondent purchases such parts of said dismantled instruments as respondent desires to use, and uses, in the assembling of the telephone instruments made partly of new and partly of used and secondhand parts as hereinbefore set out.

PAR 4. In its catalogs, circulars and other advertising matter described in Paragraph Two hereof, respondent pictures, lists and offers for sale the said telephone instruments assembled by it from new and secondhand parts at prices substantially below the prices fixed by respondent's said competitors for new telephone instruments made entirely of new parts and of the same general class and kind as the said telephone instruments offered by respondent in said advertising matter. In picturing, describing and offering for sale its said telephone instruments assembled from new and secondhand parts, respondent wholly fails to disclose that its said telephone instruments contain old, used and secondhand parts. Aforesaid picturing, describing and offering for sale of said telephone instruments by respondent in its said catalogs, circulars and other advertising matter, has the capacity and tendency to mislead and deceive the public, including aforesaid customers and prospective customers, into the belief that said telephone instruments are new instruments, composed of entirely new parts, as is customarily the case with merchandise similarly advertised and offered by manufacturers and dealers in the ordinary course of trade, and, by reason of aforesaid advantage in price, to induce the purchase of respondent's said telephone instruments in aforesaid belief, in preference to

aforesaid new telephone instruments of similar class and kind offered by respondent's competitors.

PAR. 5. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors and 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, 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 its complaint upon the respondent, Premier Electric Company, a corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondent having filed its answer admitting the allegations of the complaint in each count, and having made, executed and filed an agreed stipulation as to the facts in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such stipulation as to the facts in this case in lieu of testimony, and proceed forthwith upon such stipulation as to the 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 presenting of argument in support of same.

The Federal Trade Commission having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

PARAGRAPH 1. Respondent is a corporation, created and existing under the laws of the State of Illinois, with its principal office and place of business in the City of Chicago, in said State, where it is engaged in the manufacture of telephone instruments and telephone accessories, and the sale thereof in interstate commerce. In the course and conduct of its said business, respondent is in competition with other individuals, partnerships and corporations engaged in the manufacture of telephone instruments and telephone accessories, and/or the sale thereof in interstate commerce.

PAR. 2. Respondent markets its said commodities by issuing catalogues, circulars and other advertising matter, pictorially representing and otherwise describing its telephone instruments and

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telephone accessories, and setting forth the prices thereof, which said catalogues, circulars and other advertising matter it sends to customers and proposed customers in the various States of the United States, and upon receiving orders for said commodities through said means, respondent ships the telephone instruments and telephone accessories sold, ordered or purchased, from its principal place of business in the City of Chicago, through and into other States of the United States to said purchasers.

PAR. 3. In the course and conduct of its said business respondent maintains two separate and distinct departments, one of which departments it designates as "Rebuilt Equipment Department," from which department it sells and offers to sell "rebuilt" telephone equipment and accessories originally manufactured and sold by other manufacturers of telephone equipment and accessories, which said department is the smaller part of respondent's business. In advertising the products of said "rebuilt" equipment department above described, respondent, in its said catalogues, circulars and other advertising matter, lists specially the products of this said department.

The second and main department of its said business respondent uses to manufacture those said telephone instruments and accessories advertised in the manner described in Paragraph Two hereof, and not designated as the products of the "Rebuilt" equipment department.

PAR. 4. A substantial number of the telephone instruments and accessories manufactured and sold by respondent, in the manner described in Paragraph Two, are not fabricated entirely of new parts, but are fabricated by respondent by assembling some new parts with certain old, used and second-hand parts secured by respondent by dismantling used and second-hand telephone instruments purchased by it for that purpose, or secured from other manufacturers or dealers who have dismantled used and second-hand telephone instruments, and from whom respondent purchases such parts of said dismantled instruments as respondent desires to use and uses in the assembling of the telephone instruments and telephone accessories made partly of new and partly of used, second-hand parts, as hereinbefore set out.

PAR. 5. In its catalogues, circulars and other advertising matter described in Paragraph Two hereof, respondent pictures, lists and offers for sale the said telephone instruments and telephone accessories assembled by it in its said main department, from new and second-hand parts, at prices substantially below the prices at which re-

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spondent's competitors sell and offer for sale to the general public new telephone instruments made entirely of new parts, and of the same class and kind as the said telephone instruments and accessories offered and sold by respondent as aforesaid. In picturing, describing and offering for sale its said telephone instruments and accessories fabricated in its said main department from new and second-hand parts, respondent wholly fails to disclose that such telephone instruments and telephone accessories contain old, used and second-hand parts; and in picturing, describing and offering for sale the products of its said "rebuilt" department, respondent discloses that such parts are from old, used, and second-hand parts. The non-disclosure by respondent in picturing, describing and offering for sale its telephone instruments and telephone accessories assembled from new and second-hand parts, of the fact that said telephone instruments and telephone accessories are manufactured of new and second-hand parts, and the picturing, describing and offering for sale of the products of said respondent's "rebuilt" department describing the said products of said "rebuilt" department as "rebuilt" products, has the tendency and capacity to mislead and deceive, and does mislead and deceive the purchasing public into the belief that the products of respondent's main department are fabricated entirely of new and unused parts, and that the offering of said products at prices below those at which similar articles fabricated entirely of new parts are offered by respondent's competitors, gain for respondent an unfair good-will which should accrue to the competitors of respondent.

CONCLUSION.

The practices of respondent, under the conditions and circumstances described in the foregoing findings as to the facts are unfair methods of competition in commerce and constitute a violation of the Act of Congress approved September 26, 1914.

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 conclusions that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal

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Trade Commission, to define its powers and duties, and for other purposes";

It is now ordered, That the respondent, Premier Electric Company (a Corporation), and its officers, directors, representatives, agents, servants and employees, cease and desist from directly or indirectly advertising, selling or offering for sale telephone instruments, equipment and accessories composed of or containing used or second-hand parts, without distinctly, definitely and clearly stating and disclosing that said instruments, equipment, and accessories are composed of or do contain used or second-hand parts.

It is further ordered, That the respondent, Premier Electric Company (a 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 herein set forth.

L. C. ORRELL & CO.

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