

Complaint.

FEDERAL TRADE COMMISSION

v.

L. C. ORRELL & COMPANY.

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

Docket 885—January 23, 1923.

SYLLABUS.

Where a firm engaged in the distribution and sale of ready mixed paints, painting materials, and painters' supplies, in advertising its "Painters' Pure Paint Brand," falsely set forth in its catalogues, pamphlets, circulars and other literature, and on the labels thereof, that said paint was "100% pure" and that the only ingredients were pure carbonate of lead, turpentine, pure zinc oxide, pure linseed oil, and japan dryer; the fact being that said paint contained a substantial quantity of inferior siliceous matter, and lead sulphate and mineral spirits, respectively, in lieu of the two ingredients first above named:

Held, That such false and misleading advertising, and such mislabelling, under the circumstances set forth, constituted unfair methods 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 L. C. Orrell & 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:

PARAGRAPH 1. Respondent is an individual doing business under the trade name and style L. C. Orrell & Company, with his principal place of business in the city of Chicago, State of Illinois. He is engaged in selling paints and painters' supplies to painting contractors and painters throughout the United States. His method of doing business is as follows: He sends catalogues, pamphlets, and other literature describing and setting forth the prices fixed by him for the paints in which he deals to customers and prospective customers throughout the United States. Upon receiving orders for paints through said means, respondent causes the paints so ordered to be shipped from his said place of business in the city of Chicago to said purchasers at points in various States of the United States. In the course and conduct of his said business respondent is in

Findings.

5 F. T. C.

competition with other individuals, partnerships, and corporations similarly engaged in selling paints in interstate commerce and with the trade generally.

PAR. 2. For more than one year last past respondent has caused and still causes to be inserted in his aforesaid catalogues, pamphlets, and other literature false and misleading assertions concerning the nature, quality, and ingredients of his aforesaid paints, among which are statements to the effect that the paints comprised in one of respondent's brands, named "Painter's Pure Paint," contain pure lead, pure zinc oxide, pure raw linseed oil, pure turpentine and japan drier, and that the paints comprising said brand are the best and cheapest paints for the painter to use; are equaled by a few other paints but surpassed by none, and that the user is guaranteed 100 per cent quality, service, and value. The truth and fact is that the paints supplied in respondent's said brand contain no turpentine whatsoever, but in lieu thereof contain mineral spirits.

PAR. 3. Aforesaid false and misleading assertions had and have the capacity and tendency of misleading the aforesaid purchasers into the belief that the paints comprised in respondent's aforesaid "Painters' Pure Paint" brand contain japan drier and turpentine and to purchase said paints in that belief.

PAR. 4. 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, L. C. Orrell & Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

Respondent, having entered its appearance by L. C. Orrell, a member of respondent firm, and filed its answer herein, a statement of facts was agreed upon by and between W. H. Fuller, chief counsel for the Federal Trade Commission, and respondent company, and its members, L. C. Orrell and Fredericka B. Orrell, in which it is stipulated and agreed by the respondent and said L. C. Orrell and said Fredericka B. Orrell that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and

in lieu of testimony, and proceed forthwith with such agreed statement of 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, and the Federal Trade Commission, having duly considered the record, and 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, L. C. Orrell & Company, is the firm name and style adopted and used by said L. C. Orrell and his wife, said Fredericka B. Orrell, in conducting as partners the business of selling and distributing ready-mixed paints, painting materials, and painters' supplies to painters, painting contractors, and dealers throughout the United States, as hereinafter set forth. Said L. C. Orrell is the managing partner of said business, conducted under the firm name and style of respondent L. C. Orrell & Company, and said Fredericka B. Orrell is the only other member of said partnership. The said partnership of said L. C. Orrell and Fredericka B. Orrell was organized in the year 1895, and the said business is, and has been continuously from that time, conducted as hereinafter set forth, with its principal office and place of business in the city of Chicago and State of Illinois. Said L. C. Orrell and Fredericka B. Orrell in conducting the business of respondent company as aforesaid, advertise, sell, and distribute said ready-mixed paints under brand names owned by them as copartners and ship and distribute said ready-mixed paints to their customers in tin containers, which are of assorted sizes, bearing labels on which are printed the brand name of the paint so labeled. The principal brand of said ready-mixed paint dealt in as aforesaid is "Painters' Pure Paint" brand. In carrying on and conducting the aforesaid business of respondent, said L. C. Orrell and Fredericka B. Orrell solicit and obtain orders for said ready-mixed paints through catalogues, pamphlets, circulars, and other literature which they cause to be sent by mail from the aforesaid place of business in Chicago, Ill., to customers and prospective customers throughout the United States. In said catalogues, pamphlets, circulars, and other literature said ready-mixed paints are advertised and described, and the brand names and prices of said paints are therein set forth. Upon receiving orders for said ready-mixed paints said L. C. Orrell and Fredericka B. Orrell, in conducting the aforesaid business of respondent company, cause the paint so ordered to be shipped in interstate commerce from the city of Chicago, Ill., through and into the various

Conclusion.

5 F. T. C.

other States of the United States and the District of Columbia to the purchasers thereof, and in carrying on said business, as aforesaid, they are in direct, active competition with other persons, partnerships, and corporations similarly engaged in interstate commerce and with the trade generally.

PAR. 2. That in carrying on and conducting the business of respondent company, as aforesaid, said L. C. Orrell and Fredericka B. Orrell, for more than one year last past, caused to be inserted and printed conspicuously in said catalogues, pamphlets, circulars and other literature, and on the aforesaid labels, statements and representations that the paint comprised in said "Painters' Pure Paint" brand is "100% pure," and that all the ingredients of said paint are, and the same is, composed of pure carbonate of lead, pure zinc oxide, pure linseed oil, turpentine, and japan drier; whereas, the truth and facts are that the paint comprised in said "Painters' Pure Paint" brand so advertised and represented does not contain any carbonate of lead or turpentine, but contains lead sulphate in lieu of said pure carbonate of lead, and contains mineral spirits in lieu of said turpentine, and that said paint also contains siliceous matter to the extent of approximately 9 per cent of the volume of said paint, which siliceous matter is inert pigment and is inferior in quality and value to carbonate of lead, lead sulphate or zinc oxide.

PAR. 3. That the aforesaid statements and representations are false and misleading and have and had the capacity and tendency to mislead and deceive the purchasers of the paint comprised in said "Painters' Pure Paint" brand, and the public, into the mistaken belief that said paint so advertised and represented does not contain siliceous matter, lead sulphate or mineral spirits, and that it does contain pure carbonate of lead as its principal solid ingredient and turpentine as its principal volatile ingredient, and to cause said purchasers to purchase said paint in that belief, and thereby securing among the purchasing public an undue preference for said paint over similar paints of competitors which are truthfully marked and advertised.

CONCLUSION.

The 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 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 on complaint of the Commission, the answer of the respondent, a statement of facts agreed on by counsel for the Commission and respondent L. C. Orrell & Company and L. C. Orrell and Fredericka B. Orrell, members of respondent company, and the Commission having made its findings as to the facts with its conclusion that 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 respondent, L. C. Orrell & Company, its members, officers, agents, representatives, servants, and employees do cease and desist from directly or indirectly:

1. Making or causing to be made in catalogues, pamphlets, circulars, or otherwise, in connection with the sale, or offering for sale, of paints by respondent in interstate commerce, representations, statements, or assertions to the effect that the paint comprised in respondent's "Painters' Pure Paint" brand, or any other paint so offered and sold,

(a) Contains carbonate of lead as its principal solid ingredient,

(b) Contains turpentine as its principal volatile ingredient,

(c) Does not contain siliceous matter or lead sulphate or mineral spirits,

when such representations, statements, or assertions are not true in fact.

2. Making or causing to be made any other false or misleading representation of similar import or effect in connection with the sale of said paint in interstate commerce.

It is further ordered, That the respondent within sixty (60) days from the 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.

396

FEDERAL TRADE COMMISSION DECISIONS.

Complaint.

5 F. T. C.