

FEDERAL TRADE COMMISSION

v.

AMERICAN TURPENTINE COMPANY TRADING UNDER
THE NAME AND STYLE OF NORTH AMERICAN FIBRE
PRODUCTS COMPANY.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 938—February 1, 1923.

SYLLABUS.

Where a corporation engaged as the North American Fibre Products Company in the sale of varnishes and similar products which it purchased from manufacturers,

- (a) Sold products branded and labeled by the manufacturer, at its request, with such legends as "Manufactured Exclusively by the North American Fibre Products Company," "Sole Manufacturers, North American Fibre Products Company";
- (b) Used similar statements in its circulars, pamphlets, letters and other advertising;
- (c) Claimed in its circulars etc., that it had factories in a number of large cities, the fact being that the factories specified were those of one of the manufacturers from whom it purchased its products;

With the result that purchasers were misled into dealing with it in the belief that they were buying directly from a manufacturer and thereby saving all intermediate profits:

Held, That such practices, 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 the American Turpentine Company, trading under the name and style of North American Fibre Products 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. The North American Fibre Products Company is a trade name of the respondent, American Turpentine Company, which is a corporation organized under the laws of the State of Ohio, with a capitalization of \$100,000, with its principal office and place of

business in Cleveland, in said State. Said respondent, American Turpentine Company, is now and at all times hereinafter mentioned has been engaged in jobbing and wholesaling varnishes, paints, roofing material and similar products, and in the conduct of its business utilizes the trade name North American Fibre Products Company in the sale of said products which were and are purchased by the said respondent, American Turpentine Company, under its own name, and said products, when so purchased by said respondent, American Turpentine Company and sold under the name North American Fibre Products Company, are transported from the factories of the manufacturers thereof in the State of Ohio and other states to the purchasers thereof in the several states of the United States, and are transported from the said factories through and into the various states of the United States. In the course of the conduct of respondent's business as aforesaid, the said respondent comes in competition with other individuals, partnerships and corporations engaged in the wholesaling and jobbing of similar commodities.

PAR. 2. The said respondent, American Turpentine Company, in the course of its business, as aforesaid, causes the manufacturers of the products which it deals in to brand and label them as though the said products were manufactured by the said North American Fibre Products Company using such terms as "Manufactured only by the North American Fibre Products Company" or "Manufactured by the North American Fibre Products Company." Said respondent, American Turpentine Company, in the course of its business, issues and causes to be issued circulars, pamphlets, letters and other literature containing the statements "Manufactured by North American Fibre Products Company" and indicating that the North American Fibre Products Company are "Originators and sole manufacturers." Said respondent, American Turpentine Company, also prints on its said circulars, pamphlets, letters and other literature the statement that it has factories in the cities of Cleveland, Ohio; Chicago, Ill.; New Orleans, La.; Reading, Pa.; St. Louis, Mo.; St. Paul, Minn.; San Francisco, Cal.; Brooklyn, N. Y.; and Cincinnati, Ohio. The said respondent does not own or operate any factories whatever.

PAR. 3. The words "Manufactured by North American Fibre Products Company" and "Originator and sole manufacturer," and similar expressions, used by respondent in the sale of its said products, on its labels and brands, and on its letterheads, pamphlets, circulars and other literature as aforesaid, signify to and are understood by a substantial part of the purchasing public to mean that the

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said respondent, trading under the name of North American Fibre Products Company, is the manufacturer of said products when in truth and in fact the said respondent is not a manufacturer of the products which it sells, but purchases all of said products from others who manufacture the same. The practice of respondent of using the words set forth above, which falsely represent it to be a manufacturer, and the use of such list of cities in which factories are falsely alleged to be located, have the tendency and capacity to deceive and mislead, and do deceive and mislead the purchasing public into the belief that the products so labeled, branded and described are actually manufactured by the said respondent, trading under the name of North American Fibre Products Company, and that the factories so listed in different cities are factories owned and operated in those cities by said respondent trading under the name of North American Fibre Products Company, and induced many among the retail trade and purchasing public to purchase said products sold by the said respondent, as aforesaid, in that belief, and in the further belief that they were purchasing directly from the manufacturers of said products and saving all intermediate profits.

PAR. 4. There are a considerable number of manufacturers who manufacture paints, varnishes and roofing materials and sell the same to the wholesale and retail trade and the consuming public in competition with respondent. There are also many wholesalers and jobbers of paints, varnishes and roofing materials who do not brand, label or advertise their said products to be manufactured by themselves.

PAR. 5. The above alleged acts and things done by respondent are all of the prejudice of the public and of 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, American Turpentine Company trading under the name and style of North American Fibre Products Company, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondent having entered its appearance in its own proper person and filed its answer herein, admitting all the allegations of

the complaint and each count and paragraph thereof, and having made, executed and filed an agreed statement of facts, in which it is stipulated and agreed by the respondent 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 or the presentation of argument in support of same, 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. Respondent, American Turpentine Company, is a corporation organized and existing under the laws of the State of Ohio, with a capitalization of \$100,000, with its principal office and place of business in Cleveland in said State. In the conduct of its business said corporation utilizes the trade name North American Fibre Products Company in the sale of its products, which were and are purchased by the said respondent, American Turpentine Company, under its own name.

PAR. 2. The said respondent, American Turpentine Company, is now and at all times hereinafter mentioned has been, engaged in jobbing and wholesaling varnishes, paints, roofing material and similar products, and said products when purchased by said respondent, American Turpentine Company, and sold under the trade name, North American Fibre Products Company, are transferred from the factories of the manufacturers thereof in the State of Ohio and other States, to the purchasers thereof in the several states of the United States, and are transported from the said factories through and into the various states of the United States. In the course of respondent's business, as aforesaid, the said respondent comes in competition with other individuals, partnerships and corporations engaged in the wholesaling and jobbing of similar commodities.

PAR. 3. The respondent American Turpentine Company, under the trade name, North American Fibre Products Company, sells its various kinds of paints, varnishes, enamel, roofing material and other products under the brand "Horneblende." The products so sold by respondent as aforesaid are manufactured for it by various manufacturers, who label the said products in accordance with instructions from the respondent. The principal product sold by respondent under the name North American Fibre Products Company, is

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"Horneblende" Asphalt Fibre Liquid Roofing Cement, which is manufactured for it by Cleveland paint and varnish concerns according to formulae supplied by said respondent. All the products other than said roofing cement are manufactured for the said respondent by other manufacturers of paint and varnish located throughout the United States.

PAR. 4. In the course of its business, as aforesaid, the respondent, American Turpentine Company, causes the manufacturers of the products which it deals in to brand and label them with the following terms, "Manufactured Exclusively by the North American Fibre Products Company," "Manufactured only by the North American Fibre Products Company," "Manufactured by North American Fibre Products Company," "Manufactured and Guaranteed by North American Fibre Products Company," and "Sole Manufacturers, North American Fibre Products Company." Said respondent, American Turpentine Company, trading under the name and style North American Fibre Products Company, in the course of its business issues and distributes circulars, pamphlets, letters and other advertising literature to further the sale of its product, in which literature occur the aforesaid statements, indicating that the North American Fibre Products Company is the manufacturer of said products and is "Originators and Sole Manufacturers" thereof. The American Turpentine Company neither under its own name nor under the trade name North American Fibre Products Company manufactures anything, but all of the products which it deals in are purchased from the manufacturers thereof and labeled, and branded as aforesaid in accordance with instructions given and formulae furnished by said respondent.

PAR. 5. Said respondent, American Turpentine Company, prints on its said circulars, pamphlets, letters and other advertising literature the statement that North American Fibre Products Company has factories in the cities of Cleveland, Ohio; Chicago, Ill.; New Orleans, La.; Reading, Pa.; St. Louis, Mo.; St. Paul, Minn.; San Francisco, Calif.; Brooklyn, N. Y.; and Cincinnati, Ohio. The factories in the cities listed are not the factories of respondent, but are factories owned and operated by the Glidden Varnish Company, from which company respondent purchases all the products which it sells other than Asbestos Fibre Liquid Roofing cement. Respondent is not a manufacturer and does not own or operate any factories in any city whatsoever.

PAR. 6. The statements "Manufactured by North American Fibre Products Company" and "Originator and Sole Manufacturer" and

"Manufactured only by the North American Fibre Products Company" and similar expressions used on its labels and brands, and on its letterheads, pamphlets, circulars and other literature by respondent as aforesaid in the sale of its said products, and the use of the list of cities in which factories are falsely alleged to be located, signify to and are understood by a substantial part of the purchasing public to mean that the said respondent, trading under the name of North American Fibre Products Company, is the manufacturer of said products.

PAR. 7. The purchasing public believes that when it buys goods direct from the manufacturer it thereby saves all intermediate profits, and many of the purchasing public, therefore, prefer to buy direct from a manufacturer. By the practice of using the statements set forth in Paragraph 4, and the list of factories as shown in Paragraph 5, respondent was enabled to mislead purchasers into the belief that they were buying direct from a manufacturer.

PAR. 8. There are many manufacturers who manufacture paints, varnishes and roofing materials and sell the same to the wholesale and retail trade and to the consuming public in competition with respondent. There are also many wholesalers and jobbers of paints, varnishes and roofing materials who do not brand, label or advertise the products which they sell so as to indicate that they are manufacturers thereof.

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, upon the complaint of the Commission, the answer of the respondent, and the statement of facts agreed upon by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion, that the 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."

Order.

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It is now ordered, That the respondent, American Turpentine Company, trading under the name and style of North American Fibre Products Company, and its officers, directors, agents, representatives, servants and employees, cease and desist from:

(1) Using words, statements, or phrases on its letterheads, or in circulars, pamphlets or other advertising literature distributed by it in which the claim is made that it is a manufacturer, or that it manufactures the products which it sells, unless and until such respondent actually owns or operates a factory in which the products sold by it are manufactured.

(2) Distributing or circulating in commerce, among the several states of the United States, on its letterheads, or in circulars, pamphlets or other advertising literature used by it, a list of cities in which it claims to own and operate factories, unless and until such respondent actually owns or operates a factory in said city or cities, in which the products sold by it are manufactured.

Respondent is further ordered, To file a report in writing with the Commission sixty (60) days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

WESTERN MEAT CO.

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Complaint.