FEDERAL TRADE COMMISSION

v.

CLIFFORD SMITH, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF CLIFFORD SMITH COMPANY.

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

Docket 919—February 5, 1923.

SYLLABUS.

Where an individual engaged in the sale of paints, turpentine, and allied products, advertised a turpentine substitute as "Argentine turpentine," and sold and offered the same in barrels or containers bearing the words "Argentine turpentine sub." or "Arg. turp. sub."; with a capacity and tendency to mislead and deceive consumers and the public into believing said substitute to be turpentine, and thereby cause the purchase thereof:

Held, That such false and misleading advertising, and such mislabeling, 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 Clifford Smith, doing business under the trade name and style Clifford Smith 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 Clifford Smith Company, with his place of business in the city of Richmond, State of Virginia. At all times hereinafter mentioned respondent has been and now is engaged in selling paints, oils, varnishes, turpentine and allied products to retail dealers, painters and painting contractors located at points in various States of the United States. He delivers said commodities when so sold by causing the same to be transported from his said place of business in the city of Richmond to said purchasers at points in various States of the United States. In the course and conduct of his said business, respondent is in competition with other individuals, partnerships and corporations similarly engaged in the sale of similar commodities in interstate commerce, and with the trade generally.

PAR. 2. Amongst the commodities dealt in by respondent as hereinbefore set out is a commodity named by respondent "Argentine turpentine," and for more than five years last past respondent has sold and still sells the same to his aforesaid trade under the name "Argentine turpentine," and in connection therewith sends to his aforesaid trade, letters, post cards, price lists, booklets and other literature advertising, describing, and giving prices for the commodities dealt in by him, in which said advertising respondent lists the said product under the name "Argentine turpentine." Upon the barrels in which said commodity is sold respondent causes the name "Argentine turpentine" to be stenciled. The truth and fact is that said commodity is not turpentine but is a substitute therefor, consisting of a mixture of mineral oil and destructively distilled wood turpentine, the proportions of said ingredients being about three-fourths mineral oil and one-fourth destructively distilled wood turpentine.

PAR. 3. The above alleged use of the name "Argentine turpentine" by respondent, and the sale of said commodity under the said name as hereinbefore set out, had and has the capacity and tendency to mislead and deceive the aforesaid retail-dealer purchasers, and through them the consuming public, into the belief that said commodity is turpentine and to buy the same in that belief, and to mislead and deceive aforesaid painters and painting-contractor customers that said commodity is turpentine and to use said commodity in that belief in painting work done under specifications calling for paint containing turpentine.

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 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 a complaint upon the respondent, Clifford Smith, doing business under the trade name and style of Clifford Smith 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 his appearance and filed his answer herein, stipulated in writing that a certain statement of facts executed by the chief counsel for the Federal Trade Commission

and by the respondent, subject to approval by the Commission, may be taken and considered by the Federal Trade Commission as the facts in this proceeding, in lieu of testimony before the Commission, and that the Federal Trade Commission may proceed upon said statement of facts to make its report in this proceeding, stating its findings as to the facts and conclusion, and enter such orders herein as said stipulation and the law may warrant, and in said stipulation the respondent waived the right to offer testimony, file brief and make oral argument; thereupon this proceeding came on for final hearing, and the Federal Trade Commission having duly considered the record, and being fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Clifford Smith, is an individual doing business under the trade name and style of Clifford Smith Company, and has his principal place of business in the city of Richmond, Va. At the time of and immediately prior to the issuance of the complaint herein, the respondent was engaged in the business of selling paints, oils, varnishes, turpentine, and allied products to retail dealers, painters, and paint contractors located at points in various States of the United States. The respondent delivered said commodities when sold by causing them to be transported from his place of business in the city of Richmond, Va., to purchasers at points in various States of the United States, and in the course and conduct of said business the respondent is and was engaged in interstate commerce, in competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. Among the articles or commodities dealt in by the respondent is an article or commodity named by the respondent "Argentine turpentine," and for more than five years last past the respondent has sold said commodity and offered the same for sale to his trade under the said name. In connection with the sale of said article or commodity, the respondent sends post cards and price lists to his customers and prospective customers advertising, describing, and quoting prices for the commodities dealt in by him, and in said post cards and price lists the respondent has listed the said commodity under the name of "Argentine turpentine." Upon the barrels or containers in which said commodity is sold and offered for sale the respondent caused the words "Argentine turpentine sub.," or the abbreviations "Arg. Turp. Sub." to be stenciled. The said commodity so named, sold, and offered for sale by the respondent, as aforesaid, is not turpentine, but is a substitute therefor.

PAR. 3. The use by the respondent of the name "Argentine turpentine," and the sale by him of said commodity under the name of "Argentine turpentine," as hereinbefore described, had and has the capacity and tendency to mislead and deceive consumers and the public into the belief that said commodity was turpentine and to cause them to buy said commodity in that belief.

CONCLUSION.

The practices of the respondent, under the conditions and circumstances described in paragraphs 1, 2, and 3 of 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 an agreed statement of facts, and the Commission having made its findings as to the facts with its conclusion that the 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 ordered, That the respondent, Clifford Smith, doing business under the trade name and style of Clifford Smith Company, cease and desist—

1. From using the words "Argentine turpentine" in the sale or offer for sale of a commodity which is not turpentine and which does not originate in the Argentine Republic.

2. From using the word "turpentine" in the sale or offer for sale of a commodity which is not turpentine unless accompanied by the word "substitute" as a part of the trade name or brand by which such commodity is sold, the word "substitute" to be as prominently displayed as the word turpentine.

It is further ordered, That the respondent, within thirty (30) days after the service on him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied and is complying with this order.

FEDERAL TRADE COMMISSION

v.

UNITED STATES HOFFMAN MACHINERY CORPORATION ET AL.