

FEDERAL TRADE COMMISSION DECISIONS.

FINDINGS AND ORDERS FEBRUARY 14 TO NOVEMBER 4, 1923.

FEDERAL TRADE COMMISSION

v.

JOHN McQUADE & COMPANY, INC.

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

Docket 929—February 14, 1923.

SYLLABUS.

Where the products of an internationally known and long established foreign manufacturer of high grade white zincs containing no adulterants whatsoever had become known to the trade and public under the brand "Vieille Montagne," and where the words "Green Seal" and "White Lead" had come to be understood by the trade and the purchasing public as denoting respectively a high grade white zinc and pigments composed wholly of commercially pure basic lead carbonate or basic lead sulphate; and thereafter an American manufacturer of paints, zincs, white lead, and other similar goods,

- (a) Offered and sold one of its products, containing not more than 20% of zinc, in containers labeled "FRENCH WHITE ZINC GREEN SEAL NO. 1 ZINC FROM THE VIEILLE MONTAGNE CO. PARIS"; and
- (b) Used and featured the words "Green Seal" and "White Lead," on containers of similar products containing not more than 20% zinc oxide, and little or no basic lead carbonate or basic lead sulphate respectively;

With the result that the trade and purchasing public were misled respecting the source and composition of the aforesaid products:

Held, That such simulation of the trade name of a competitor's product, 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 John McQuade & Company, Inc., hereinafter referred to as the respondent, has been and is now 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. That the respondent, John McQuade & Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York. That its principal office and place of business is located in the borough of Brooklyn in the city and State of New York.

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That, at all the times hereinafter mentioned, the respondent was, ever since has been and now is engaged in the business of manufacturing and selling in interstate commerce to wholesalers and dealers located in other States of the United States and the District of Columbia, paints, oil colors, enamels, oil finishes, zinc, varnishes, white lead, lead compositions and other similar goods, wares and merchandise.

That, at all the times hereinafter mentioned, there was, ever since has been and now is a constant current of trade and commerce in said and similar products between and among the various States and Territories of the United States and the District of Columbia and particularly from the said city of New York, State of New York, to and into and among the various other States and Territories of the United States and the District of Columbia; that in the course of its said business the said respondent, at all the times hereinafter mentioned, was, ever since has been and now is, in competition with other corporations, partnerships and individuals engaged in the manufacture and sale of said and similar products in and among the various States and Territories of the United States and the District of Columbia.

PAR. 2. That for more than one year immediately preceding the issuance of this complaint the respondent has manufactured, and sold in the manner and places set out in paragraph 1 of this complaint, a product upon the commercial containers of which the respondent places labels of one of which the following is substantially a correct copy:

"FRENCH WHITE ZINC
GREEN SEAL
No. 1
ZINC
FROM THE
VIEILLE MONTAGNE Co.
PARIS"

That the name "Vieille Montagne" is a name commonly applied by the trade to the white zinc products manufactured and sold to the trade by the Societe des Mines & Fonderies de Zinc de la Vieille Montagne, which, at all the times mentioned herein, was, ever since has been and now is located and engaged in business at Angleur par Chenée Belgium, an internationally known and long established manufacturer of high grade white zinc containing no adulterants whatsoever; that the product manufactured by the respondent and sold by it under the labels mentioned above, and particularly under the one above set forth, as and for the product of the said Societe

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des Mines & Fonderies de Zinc de la Vieille Montagne, contains no more than approximately 20 per cent of zinc oxide; that the words "Green Seal" denote to the trade and to the purchasing public a high grade white zinc, and the words "Vieille Montagne" denote to the trade and to the purchasing public a zinc oxide commercially pure and one manufactured and sold by the said Societe des Mines & Fonderies de Zinc de la Vieille Montagne.

PAR. 3. That the aforesaid labels used by the respondent under the circumstances above set forth are false, deceptive and misleading and are calculated and designed to and do deceive the trade and the general public into believing that the said product is composed wholly of zinc oxide and is also the well-known and unadulterated product of the said Societe des Mines & Fonderies de Zinc de la Vieille Montagne, whereby the said respondent has been able to pass off its products, described in paragraph 2 herein as and for the product of said Societe des Mines & Fonderies de Zinc de la Vieille Montagne.

PAR. 4. That for more than one year immediately preceding the issuance of this complaint, the respondent has produced, and sold in the manner set forth and described in paragraph 1 herein, a product containing zinc and other pigments; that upon the commercial containers, in which the respondent sells as aforesaid this said product to the trade and the purchasing public, the respondent places certain false and misleading labels to indicate and describe the contents of said containers; and that some of these said labels are substantially as follows:

(a)

"FRENCH
GREEN (SEALS) SEAL
Cherry Hill Paint Co. Brooklyn, New York
WHITE ZINC
Ground in Refined Linseed Oil."

(b)

"FRENCH ZINC
GREEN SEAL
Ground in Refined Linseed Oil."

(c)

"BEST AMERICAN
GREEN (EAGLE) SEAL
WHITE ZINC
Ground in Refined Linseed Oil."

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That the term "Green Seal," when used to describe "White Zinc" signifies to the trade and to the purchasing public a high grade of white zinc, that the fact is that the product, sold by the said respondent in the said commercial containers and under labels identical with or similar to the labels (a), (b) and (c) above set forth, is composed of not more than about 20 per cent of white zinc.

PAR. 5. That the aforesaid labels used by the respondent under the circumstances above set forth in paragraph 4 are false, deceptive and misleading and are calculated and designed to and do deceive the trade and the general public into believing that the said products sold under the labels mentioned and described in said paragraph 4 are composed wholly of commercially pure zinc oxide.

PAR. 6. That for more than one year immediately preceding the issuance of this complaint, the respondent has produced, and sold in the manner set forth and described in paragraph 1 herein, a product upon the commercial containers in which the respondent sells as aforesaid this said product to the trade and to the purchasing public, the respondent places certain false and misleading labels to indicate and describe their contents, and that some of these said labels are substantially as follows:

(a) "AMERICAN
WHITE LEAD
Ground in Refined Oil
Made of the Best and Purest Materials."

(b) "STANDARD
This Lead is Manufactured of the
BEST
and
Purest Materials
Bleached Linseed Oil
Only Original H. W. Dolson Process
WHITE LEAD."

That the term "White Lead," when used in labels placed upon commercial containers of pigments, signifies to the trade and to the purchasing public pigments composed wholly of commercially pure basic lead carbonate or basic lead sulphate; that the product of the said respondent offered by it for sale and sold in the said commercial containers upon which it places the labels identical with or similar to the labels set out in this paragraph contains little or no basic lead carbonate or basic lead sulphate.

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PAR. 7. That said labels used by the respondent, under the circumstances above set forth in paragraph 6, are false, deceptive and misleading and are calculated and designed to and do deceive the trade and the general public into believing that the said products sold under the labels mentioned and described in said paragraph 6 are composed wholly of commercially pure basic lead carbonate or basic lead sulphate.

PAR. 8. 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, 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 a complaint upon the respondent, John McQuade & Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provision of the said act.

The respondent, John McQuade & Co., Inc., having entered its appearance by John McQuade, its president, and William L. Long, as secretary, and having filed its answer in the form of a letter dated December 19, 1922, addressed to Federal Trade Commission, Washington, D. C., and signed by John McQuade & Co., Inc., by John McQuade, president, in which no denial of the charges of the complaint was made, and having, by a letter dated January 5, 1923, addressed to Charles Melvin Neff and signed by John McQuade & Co., Inc., by John McQuade as president and William L. Long as secretary, admitted as true the allegations of the complaint herein, and having signed a stipulation admitting certain facts as true in lieu of testimony, thereupon this proceeding came on for final hearing, and the Commission, having duly considered the record and having read the above-mentioned complaint, answer, letters and stipulation, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, John McQuade & Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York; that its principal office and place of busi-

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ness is located at 134-136 Classon Avenue, in the borough of Brooklyn, in the city and State of New York.

That at all the times mentioned in said complaint, the respondent was, ever since has been and now is, engaged in the business of manufacturing and selling in interstate commerce to wholesalers and dealers located in other States of the United States and the District of Columbia, paints, oil colors, enamels, oil finishes, zinc, varnishes, white lead, lead compositions and other similar goods, wares and merchandise; that at all the times mentioned in said complaint there was, ever since has been and now is, a constant current of trade and commerce in said and similar products between and among the various States and Territories of the United States and the District of Columbia, and particularly from the said city and State of New York to and into and among the various other States and Territories of the United States and the District of Columbia; that in the course of its said business the said respondent, at all the times mentioned in the said complaint, was, ever since has been and now is, in competition with other corporations, partnerships and individuals engaged in the manufacture and sale, either or both, of said and similar products in and among the various States and Territories of the United States and the District of Columbia.

PAR. 2. That for more than one year immediately preceding the issuance of the said complaint the respondent has manufactured, and sold in the manner and places set out in paragraph 1 of these findings as to the facts, a product upon the commercial containers of which the respondent placed labels, of one of which the following is substantially a correct copy:

" FRENCH WHITE ZINC
GREEN SEAL
No. 1
ZINC
FROM THE
VIEILLE MONTAGNE CO.
PARIS "

That the name "Vieille Montagne" is a name commonly applied by the trade to the white zinc products manufactured and sold to the trade by the "Societe des Mines & Fonderies de Zinc de la Vieille Montagne," which, at all the times mentioned in said complaint, was, ever since has been and now is, located and engaged in business at Angleur par Chenée Belgium, an internationally known and long established manufacturer of high-grade white zinc containing no

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adulterants whatsoever; that the product manufactured by the respondent and sold by it under the labels mentioned above, and particularly under the one above set forth, as and for the product of the said Societe des Mines & Fonderies de Zinc de la Vieille Montagne, contains no more than approximately 20 per cent of zinc oxide; that the words "Green Seal" denote to the trade and to the purchasing public a high-grade white zinc, and the words "Vieille Montagne" denote to the trade and to the purchasing public a zinc oxide commercially pure and one manufactured and sold by the said Societe des Mines & Fonderies de Zinc de la Vieille Montagne.

PAR. 3. That the aforesaid labels used by the respondent under the circumstances above set forth are false, deceptive and misleading, and are calculated and designed to, and do, deceive the trade and the general public into believing that the said product is composed wholly of zinc oxide and is also the well known and unadulterated product of the said Societe des Mines & Fonderies de Zinc de la Vieille Montagne, whereby the said respondent has been able to pass off its products, described in paragraph 2 herein, as and for the product of said Societe des Mines & Fonderies de Zinc de la Vieille Montagne.

PAR. 4. That for more than one year immediately preceding the issuance of the said complaint, the respondent has produced, and sold in the manner set forth and described in paragraph 1 herein, a product containing zinc and other pigments; that upon the commercial containers, in which the respondent sells as aforesaid, this said product to the trade and to the purchasing public, the respondent places certain false and misleading labels to indicate and describe the contents of said containers; and that some of these labels are substantially as follows:

(a)

"FRENCH
GREEN [Seals] SEAL
Cherry Hill Paint Co. Brooklyn, New York
WHITE ZINC
Ground in Refined Linseed Oil."

(b)

"FRENCH ZINC
GREEN SEAL
Ground in Refined Linseed Oil."

(c)

"BEST AMERICAN
GREEN [Eagle] SEAL
WHITE ZINC
Ground in Refined Linseed Oil."

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That the term "Green Seal," when used to describe white zinc, signifies to the trade and to the purchasing public a high grade of white zinc; that the fact is that the product sold by the said respondent in the said commercial containers and under the labels identical with or similar to the labels (a), (b) and (c) above set forth, is composed of not more than 20 per cent of white zinc.

PAR. 5. That the aforesaid labels used by the respondent, under the circumstances above set forth in paragraph 4, are false, deceptive and misleading, and are calculated and designed to, and do, deceive the trade and the general public into believing that the said products sold under the labels mentioned and described in said paragraph 4 are composed wholly of commercially pure zinc oxide.

PAR. 6. That for more than one year immediately preceding the issuance of this complaint, the respondent has produced, and sold in the manner set forth and described in paragraph 1 of these findings as to the facts, a product upon the commercial containers in which the said respondent sells as aforesaid this product to the trade and to the purchasing public, the respondent places certain false and misleading labels to indicate and describe their contents, and that some of these said labels are substantially as follows:

(a)

"AMERICAN
WHITE LEAD
Ground in Refined Oil
Made of the Best and Purest Materials."

(b)

"STANDARD
This Lead is Manufactured of the
BEST
and
Purest Materials
Bleached Linseed Oil
Only Original H. W. Dolson Process
WHITE LEAD."

That the term "White Lead," when used in labels placed upon commercial containers of pigments, signifies to the trade and to the purchasing public, pigments composed wholly of commercially pure basic lead carbonate or basic lead sulphate; that the product of the said respondent offered by it for sale, and sold, in the said commercial containers upon which it places the labels identical with or similar to the labels set out in this paragraph, contains little or no basic lead carbonate or basic lead sulphate.

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PAR. 7. That the said labels used by the respondent, under the circumstances above set forth in paragraph 6, are false, deceptive, and misleading, and are calculated and designed to, and do, deceive the trade and the general public into believing that the said product sold under the labels mentioned and described in said paragraph 6 are composed wholly of commercially pure basic lead carbonate or basic lead sulphate.

PAR. 8. That the above-alleged acts and things done by said respondent are all to the prejudice of the public and to the 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.

CONCLUSION.

That the methods of competition set forth in the foregoing findings of fact, under the circumstances therein set forth, are unfair methods of competition in interstate commerce and in violation of the provisions 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.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the respondent, John McQuade & Co., Inc., had been, and was at the time of the issuance of the said complaint, using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 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," and that a proceeding by it in respect thereof would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered its appearance by John McQuade, its president, and William L. Long, as secretary, and having filed its answer to the said complaint, in which no denial of the charges of the complaint was made, and having admitted as true the allegations of the complaint herein, and having, in lieu of testimony, filed a stipulation admitting as true substantially all the allegations of the complaint, and the Commission being duly advised in the premises, and upon its consideration thereof having made its report in writing, wherein it stated its findings as

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to the facts and its conclusion that the respondent has violated the provisions 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."

Now, therefore, it is ordered, that the said respondent, John McQuade & Co., Inc., its officers, directors, agents and employes, cease and desist—

1. From selling, offering for sale or advertising for sale, or labeling, or otherwise describing or representing, in interstate commerce, to the trade or public, any of its zinc as "Vielle Montagne," "Vieille Montagne," or "V. M." zinc, unless the same is wholly composed of zinc manufactured by the Societe des Mines & Fonderies de Zinc de la Vieille Montagne.

2. From selling, offering for sale or advertising for sale, or labeling or otherwise describing or representing, in interstate commerce, to the trade or public, any of its goods as "White Zinc," or as "zinc," unless the same is composed wholly of pure zinc oxide, and from using the words "Green Seal" in connection therewith unless such zinc oxide is actually and wholly a high grade white zinc.

3. From selling, offering for sale or advertising for sale, or labeling or otherwise describing or representing, in interstate commerce, to the trade or public, any of its goods as "White Lead," unless the same is composed wholly of basic lead carbonate or basic lead sulphate.

And it is further ordered, That the respondent, John McQuade & Co., Inc., shall, within 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.

THE LOEB CO. ET AL.

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