

Complaint.

6 F. T. C.

FEDERAL TRADE COMMISSION

v.

INTERNATIONAL PAINT & OIL COMPANY ET AL.

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

Docket 734—February 26, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of paints and other products, including a coal tar distillate capable of being used for some of the same purposes as turpentine, named and labeled said product "tar-pen-tine" and so advertised the same, with a capacity and tendency thereby to mislead and deceive the purchasing public and induce the purchase thereof as and for turpentine:

Held, That such misleading designation of product, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the International Paint & Oil Company, hereinafter referred to as respondent, has been and is using unfair methods of competition 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 it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business in the city of Peoria, in said State.

PAR. 2. That respondent is engaged in the business of manufacturing and selling paints, oils, etc., including a coal tar distillate which is capable of being used for some of the purposes for which turpentine can be used and to which it has applied the name of "Tar-pentine" or "Tar-pentine," and causes products sold by it to be transported to the purchasers thereof from the State of Illinois through and into other States of the United States, and carries on the said business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That respondent in the course of its business as described in paragraph 2 hereof, places labels upon the containers in which the product "Tar-pentine" is marketed, and makes use of circular letters

and other advertising matter which are given general circulation among those engaged in the paint and varnish trade throughout the several States, in which labels and advertising matter the claims are made, among others, that "Tar-pentine," the product described in paragraph 2 hereof, is superior to turpentine for use in the manufacture of paints, enamel and varnish, and costs only about one-half as much as turpentine and causes no injurious effects to workmen using same, and the request is made that prospective customers do not confound "Tar-pentine" with the so-called turpentine substitutes that the market is being flooded with.

PAR. 4. That "turpentine" has come into general recognition as the name for a resinous oil distilled from the sap of pine trees, which is widely used in the arts, as in the manufacture of varnishes, paints, etc., and is used also in medicines, and the name "tar-pentine" applied to the commodity manufactured and sold by respondent, as set out in paragraph 2 hereof, so nearly resembles "turpentine" that the purchasing public under the conditions which ordinarily prevail in the trade would be likely to be deceived by the name "tar-pentine" and be induced to purchase that product because of the similarity of its name to turpentine on the erroneous belief that "tar-pentine" was turpentine or similar to turpentine or a substitute for turpentine.

PAR. 5. That by reason of the facts recited, the respondent is using 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, International Paint & Oil 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 herein, thereupon this proceeding came on for final hearing, and the Commission having duly considered the record 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 is a corporation organized and existing under the laws of the State of Illinois, with its principal

Findings.

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place of business, at the time of the issuance of the complaint herein, in the city of Peoria, in said State; that respondent later did business under the name of "Industrial Tar-Pentine Corporation," with R. N. West as secretary.

PAR. 2. That respondent is engaged in the business of manufacturing and selling paints, etc., including a coal tar distillate which is capable of being used for some of the purposes for which turpentine can be used, and to which it has applied the name of "Tarpentine" or "Tar-Pentine," and causes the products so sold by it to be transported to the purchasers thereof from the State of Illinois through and into other States of the United States, and carries on said business in direct, active competition with other persons, partnerships and corporations engaged in selling paints, oils, turpentine and similar products, who likewise cause such products to be transported from the States of their domicile to purchasers in other States, and who advertise, label and designate such products accurately.

PAR. 3. That respondent, in the course of its business as described in paragraph 2 hereof, places labels upon containers in which the product "Tar-Pentine" is marketed, and makes use of circular letters and other advertising matter which are given general circulation among those engaged in the paint and varnish trade throughout the several States, in which labels and advertising matter the claims are made, among others, that "Tar-Pentine," the product described in paragraph 2 hereof, is superior to turpentine for use in the manufacture of paints, enamels and varnishes, and costs only about one-half as much as turpentine, and causes no injurious effects to workmen using the same, and the request is made that prospective customers do not confound "Tar-Pentine" with the so-called turpentine substitutes with which the market is being flooded.

PAR. 4. That "turpentine" has come into general recognition as the name for a resinous oil distilled from the sap of pine trees, which is widely used in the arts, as in the manufacture of varnishes, paints, etc., and is used, also, in medicines, and the name "Tar-Pentine" applied to the commodity manufactured and sold by respondent, as set out in paragraph 2 hereof, so nearly resembles "turpentine" that the purchasing public, under the conditions which ordinarily prevail in the trade, would be likely to be deceived by the name "Tar-Pentine" and be induced to purchase that product because of the similarity of its name to turpentine on the erroneous belief that "Tar-Pentine" was turpentine.

CONCLUSION.

The practices of said respondent and its successor, the Industrial Tar-Pentine Corporation, and of B. C. Mason, its president, and R. N. West, its secretary, are, under the conditions and circumstances described in the foregoing findings, unfair methods of competition in interstate commerce and constitute a violation 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon its complaint and the answer of respondent, 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 now ordered, That respondent, International Paint & Oil Company, its successor, Industrial Tar-Pentine Corporation, its officers, directors, agents and employees, and R. N. West and B. C. Mason, do cease and desist:

From using the words "Tar-Pentine," "Tarpentine," or words of similar import, in connection with the sale or offer for sale of a commodity which is not turpentine.

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FEDERAL TRADE COMMISSION

v.

EVERETT F. BOYDEN, TRADING UNDER THE NAME
AND STYLE OF GEORGE E. BOYDEN & SON.