

Complaint.

FEDERAL TRADE COMMISSION

v.

THE DON-O-LAC COMPANY, INC.

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

Docket 924—July 18, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of paints, varnishes, and shellac, varnish substitutes, labeled and sold as "American Shellac," a product which contained, as first made, none, and later only a small proportion, of genuine shellac; with the effect of deceiving purchasers at retail, and with a capacity and tendency to mislead and deceive the trade and the purchasing public, to the injury of competitors who truthfully described their products:

Held, That such mislabeling, and such misrepresentation of product, 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 Don-O-Lac Company, Inc., 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 a corporation organized under and by virtue of the laws of the State of New York, with its principal office and place of business in the city of Rochester, in said State. It is, and at all times hereinafter mentioned has been, engaged in the business of manufacturing, selling, and distributing paints, varnishes, and shellacs, and substitutes for shellac, to painters, jobbers, dealers, and the public generally throughout the United States. In the course and conduct of its business respondent causes its said products when sold to be transported from the State of New York through and into other States of the United States and the District of Columbia, to the purchasers thereof. In the course and conduct of its said business respondent is, and has been at all times herein mentioned, in competition with other persons, partnerships, and corporations similarly engaged in the manufacture and/or sale of similar products in interstate commerce and with the trade generally.

PAR. 2. Respondent in the course of its business as aforesaid has caused for more than one year last past and causes to be manufac-

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tured and sold to jobbers, dealers, and the purchasing public throughout the United States by means of traveling salesmen, mail orders and otherwise, a product used by consumers as and for shellac, and distributes said product from the State of New York to the said purchasers thereof in the various States of the United States and the District of Columbia. In the marketing of said product, as aforesaid, respondent sells, advertises, and represents same to customers, prospective customers, and the purchasing public as "American Shellac," and so brands and labels said products. The truth and facts are that said product is not shellac as commercially known, that it contains no shellac gum, which gum is produced in, and obtained from, India, that it is not manufactured or composed of shellac gum and alcohol, and that it is inferior in quality and value to shellac as commercially known. The said representations, advertising, branding, and labeling of said product by respondent as aforesaid are false and have the capacity and tendency to mislead and deceive the said purchasers thereof, the trade, and the purchasing public into the belief that the product so represented, advertised, labeled, and branded is shellac as commercially known, that said product contains said shellac gum and that said product is manufactured and composed of said shellac gum and alcohol; and to cause said purchasers to purchase said product in said belief.

PAR. 3. There are a large number of manufacturers and distributors of shellac as commercially known which is composed entirely of aforesaid shellac gum and alcohol and who represent, advertise, brand, label, and sell the same under the name of "shellac," and also many manufacturers and distributors of shellac substitutes who do not represent, advertise, brand, or label said shellac substitutes as "shellac" or otherwise indicate to the purchasing public that such substitutes are manufactured or composed of shellac gum and alcohol.

PAR. 4. The above alleged acts and things done by respondent are all to 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, 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, The Don-O-Lac Company, Inc., charging it with the use of unfair methods of competition in violation of the provisions of said act.

The respondent, Don-O-Lac Company, Inc., having filed its answer, hearings were had and evidence was introduced in support of the complaint and on behalf of the respondent before an examiner of the Federal Trade Commission theretofore duly appointed, at which hearings the respondent appeared and was represented by counsel.

And thereupon this case came on for final hearing upon the complaint and the answer thereto, brief by the Commission, the report of the trial examiner, exceptions thereto by both sides, and was argued by counsel, 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. The respondent is a corporation organized under the laws of the State of New York, with its principal office and place of business in the city of Rochester, in said State. It is and has been since March 23, 1919, engaged in the business of manufacturing, selling, and distributing paints, varnishes, and substitutes for shellac varnish to painters, jobbers, dealers, and the public generally throughout the United States, and in the course and conduct of its business causes its said products when sold to be transported from the State of New York through and into other States of the United States and the District of Columbia to the purchasers thereof, and in the course and conduct of its said business respondent is and has been at all times herein mentioned in competition with other persons, partnerships, and corporations engaged in the manufacture, sale, and distribution of paints, varnishes, shellac varnishes and substitutes for shellac varnishes in interstate commerce and with the trade generally.

PAR. 2. Respondent in the course of its business as aforesaid has caused, for more than one year last past, and now causes to be manufactured and sold to jobbers, dealers, and the purchasing public throughout the United States by means of traveling salesmen, mail order and otherwise, a product used by consumers as and for shellac which said product the respondent markets under the name and label of "American Shellac."

PAR. 3. "Shellac" is a distinctive commodity and is the product produced by an insect, the *Tachardia Lacca*, a native of India and

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whose activities commercially are confined to India and a small portion of Tibet. This insect feeds upon the leaves, or twigs, of certain trees and at certain seasons swarms and collects in masses on the twigs of the trees and there exudes a substance which soon encloses the entire swarm. The twig is then detached from the tree and the twig with its incrustation, is placed in bags, or sacks, and heated over a charcoal fire, the ends of the bags being twisted by the natives until a gum-like substance drips from the bag. This gum is collected on large flat stones, or other flat surfaces, and there hardens into cakes. These cakes are later broken up into small particles and are exported from India to the United States and various countries. The industry is quite an extensive one, and there was imported in the United States in

	Pounds.
1910	24, 500, 000
1911	16, 333, 000
1912	20, 750, 000
1919	23, 750, 000
1920	29, 500, 000
1921	28, 200, 000

The figures for the years of the European War are not given. The shellac imported into the United States all originates in India and is used in the United States by manufacturers of furniture, electrical appliances, cables, whips, hats, and is in the paint trade used for making a varnish, which varnish, when made from shellac cut in alcohol, is superior to any other varnish, and is known to the trade as shellac varnish.

The essential and peculiar characteristics of shellac varnish are the rapidity with which it dries, its penetrating qualities into the grain of the wood, the fact that after it dries on being subjected to heat it becomes pliable and assumes the shape of the commodity on which it is used, and when cooled again, becomes rigid in a new shape.

No shellac is produced in America. It is all imported.

PAR. 4. "Shellac" as used and understood commercially in the trade and among manufacturers, distributors, painters, and a large part of the purchasing public, means the gum imported from India and the term "Shellac Varnish" is understood and does mean to manufacturers, distributors, painters, and a large portion of the household users thereof, the Indian gum, cut in alcohol.

PAR. 5. In the making of varnishes substitutes for shellac are used such as rosin, acroides and copal. Reputable manufacturers and dealers who prepare such varnishes with the substitutes above re-

ferred to label the product put upon the market either "Imitation Shellac," "Shellac Substitute," or put the product out under some fanciful name such as "Krystolac," "Zinlac" or other trade name. These substitutes for shellac varnish are inferior in quality and value to shellac but where no deception in branding is practiced, serve a useful purpose.

PAR. 6. The respondent, from about March 23, 1919, to April, 1922, manufactured and sold and placed upon the market a product, which said product the respondent named and branded "American Shellac" and labeled the containers in which the said product was put up with labels reading as follows:

American Shellac
White
Manufactured by
The Don-O-Lac Company, Inc.,
Rochester, N. Y.

and this product so labeled, branded, distributed, and sold, contained no shellac, namely, no gum produced in India, and after April 1, 1922, the respondent in the manufacture of its said product, incorporated 1 pound of India gum together with 44 pounds of other gums to each 10 gallons of alcohol.

PAR. 7. The said representations, branding, and labeling of said product by respondent, as aforesaid, are false and have the capacity and tendency to mislead and deceive the purchasers thereof, the trade and the purchasing public into the belief that the product so represented, advertised, labeled, and branded is shellac, and said representations, branding and labeling have deceived purchasers thereof at retail into the belief that the product so labeled and branded "American Shellac" is shellac and a varnish containing shellac gum.

PAR. 8. The misbranding by the respondent of its product is to the prejudice and injury of the competitors of the respondent, as such misbranded goods attract customers by means of the fraud which they perpetrate and trade is diverted from the seller of truthfully marked goods, and enables the respondent to sell its misbranded product to retailers under the belief that they are procuring a varnish made of shellac, and the said misbranding of the product of the respondent is injurious and prejudicial to the public, as the said misbranding has the tendency to and does and has mislead and deceived purchasers into buying said product under the mistaken belief that the same is a varnish made of shellac gum.

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CONCLUSION.

That the practices of the respondent, as set forth in the foregoing findings as to the facts are, in the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of 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."

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, the testimony and the evidence, the trial examiner's report upon the facts and the exception thereto, and upon the argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated 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,"

Now, therefore, it is ordered, That the respondent, the Don-O-Lac Company, Inc., its officers, directors, representatives, agents, and employes, cease and desist—

(1) From employing or using on labels or as brands for varnish not composed wholly, 100 per cent, of shellac gum cut in alcohol, or on the containers in which the varnish is delivered to customers, the words "American Shellac" or the word "Shellac" alone or in combination with any word or words unless accompanied by a word or words clearly and distinctly setting forth the substance, ingredient, or gum of which the varnish is composed with the percentages of all such substances, ingredients, or gums therein used clearly stated upon the label, brand, or upon the containers (e. g., "Shellac substitute," or "Imitation Shellac" to be followed by a statement setting forth the percentages of ingredients or gums therein used).

(2) From using or displaying in circulars or advertising matter used in connection with the sale of its products in interstate commerce, except when such products contain 100 per cent shellac gum cut in alcohol, the words "American Shellac" or the word "Shellac" alone or in combination with any other word or words unless accompanied by a word or words clearly and distinctly setting forth the substance, ingredient, or gum of which the varnish is composed with the percentages of all such substances, ingredients,

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or gums therein used clearly stated (e. g., "Shellac Substitute," or "Imitation Shellac," to be followed by a statement setting forth the percentages of ingredients or gums therein used).

It is further ordered, That the respondent shall file with the Federal Trade Commission, within sixty days from the date of this order, its report in writing, stating the manner and form in which this order has been conformed to and shall attach to such report two copies of all circulars, advertisements, devices, or labels distributed or displayed to the public by the respondent in connection with the sale of its product in interstate commerce subsequent to the date of this order.

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v.

PROSPERITY COMPANY, INC.