FEDERAL TRADE COMMISSION

v.

MAX BAER AND A. BAER, PARTNERS DOING BUSINESS UNDER THE NAME AND STYLE OF BAER BROTHERS.

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

Docket 1055—October 19, 1923.

SYLLABUS.

Where a firm engaged in the manufacture and sale of a product not composed wholly of genuine shellac gum dissolved in alcohol, in competition with concerns which correctly labeled, advertised and represented their products in respect of composition, labeled, advertised and sold the same under the name "Mongol Shellac" as genuine shellac; with the effect of deceiving a substantial part of the purchasing public with reference to the composition thereof and with the capacity and tendency thereby to induce its purchase:

Held, That such misbranding, and false and misleading advertising, under the circumstances set forth, constituted an unfair method 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 Max Baer and A. Baer, partners, doing business under the name and style Baer Brothers, hereinafter referred to as respondents, have been and are 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. Respondents are partners doing business under the trade name and style of Baer Brothers, and are engaged in the manufacture of paints, varnishes and allied products and the sale thereof to wholesale and retail dealers throughout the United States. They own and operate a factory for the manufacture of said products in the City of Stamford in the State of Connecticut, and a depot for the storage and shipment of said products in the City and State of New York. They ship their products from said factory to said depot and thereafter upon making sales to dealers in various States of the United States they cause said products to be transported from said depot in the City and State of New York into and through other States of the United States to said purchasers at their respective points of

location. In the course and conduct of their said business the respondents are in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale of paints, varnishes and allied products in interstate commerce.

PAR. 2. Shellac or shellac varnish, as commercially known, is a product composed solely of genuine shellac gum dissolved in alcohol, and is so understood by jobbers, dealers and the purchasing public.

PAR. 3. The respondents, in the course and conduct of their said business, manufacture and sell, and for more than one year last past have manufactured and sold to jobbers, dealers and the purchasing public, in commerce as aforesaid, throughout the States of the United States by means of traveling salesmen, advertisements and otherwise, a product not composed wholly of genuine shellac gum dissolved in alcohol, which product the respondents represent to the purchasers thereof to be pure shellac or shellac varnish, and which product and the containers thereof they label, brand and advertise as "Mongol Shellac" without indicating in any way whatever on such labels, brands and advertisements that such product contains any other gum, ingredient or substitute for gum, than genuine shellac gum. The said representations concerning said product and the labels, brands and advertisements upon the containers thereof are false and misleading and have the capacity and tendency to mislead and deceive the purchasers thereof, the trade and purchasing public, into the belief that such product so represented, labeled, branded and advertised by respondents, is composed wholly of genuine shellac gum dissolved in alcohol and to induce said purchasers to purchase same in that belief.

PAR. 4. A large number of respondents' competitors referred to in paragraph 1 hereof sell and distribute throughout the United States shellac varnishes represented, advertised, branded and labelled as such, which said varnishes are composed of shellac gum dissolved in alcohol and contain no other gum or rosin.

PAR. 5. The above alleged acts and things done by respondents are all to the prejudice of the public and respondents' 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 respondents, Max Baer and A. Baer, copart-

ners, doing business under the name and style of Baer Brothers, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having filed their answers and entered their appearances herein, and made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondents 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 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 being now fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents are partners doing business under the trade name and style of Baer Brothers and are engaged in the manufacture of paints, varnishes and allied products and the sale thereof to wholesale and retail dealers throughout the United States. They own and operate a factory for the manufacture of said products in the city of Stamford, in the State of Connecticut, and a depot for the storage and shipment of said products in the city and State of New York. They ship their products from said factory to said depot and thereafter upon making sales to dealers in various States of the United States they cause said products to be transported from said depot in the city and State of New York into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of their said business the respondents are in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale of paints, varnishes and allied products in interstate commerce.

PAR. 2. Shellac or shellac varnish, as commercially known, is a product composed solely of genuine shellac gum dissolved in alcohol, and is so understood by jobbers, dealers and the purchasing public.

PAR. 3. The respondents, in the course and conduct of their said business, manufacture and sell, and for more than one year last past have manufactured and sold to jobbers, dealers and the purchasing public, in commerce as aforesaid, throughout the States of the United States by means of traveling salesmen, advertisements and otherwise, a product not composed wholly of genuine shellac gum dissolved in alcohol, which product the respondents represent

to the purchasers thereof to be pure shellac or shellac varnish, and which product and the containers thereof, they label, brand and advertise as "Mongol Shellac" without indicating in any way whatever on such labels, brands and advertisements that such product contains any other gum, ingredient or substitute for gum, than genuine shellac gum, copies of which labels are hereto annexed and made a part hereof.

PAR. 4. A large number of respondent's competitors referred to in paragraph 1 hereof sell and distribute throughout the United States shellac varnishes represented, advertised, branded and labelled as such, which said varnishes are composed of shellac gum dissolved in alcohol and contain no other gum or rosin.

PAR. 5. That the brands, labels and advertisements containing the words "Mongol Shellac" used by the respondents upon the containers of the product manufactured, sold and shipped by them as set forth in the foregoing findings are false, and have the capacity and tendency to, and do, mislead and deceive a substantial part of the purchasing public into the belief that such product, so labeled, branded and advertised by the respondents is composed solely of genuine shellac gum dissolved in alcohol, and to induce said purchasers to purchase same in that way.

CONCLUSION.

The practices of the said respondents under the conditions and circumstances described in the foregoing findings are unfair methods of competition in 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 answers of the respondents, and the statement of facts agreed upon by the respondents and counsel for the Commission, and the Commission having made its findings as to the facts, with its conclusion that the respondents have 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,"

It is now ordered, That the respondents, Max Baer and A. Baer, copartners doing business under the name and style of Baer Broth-

ers, and each of them, their agents, representatives, servants and employees, cease and desist:

(1) From directly or indirectly employing or using on labels or as brands for varnish not composed wholly, one hundred per cent, of shellac gum cut in alcohol, or on the containers in which the varnish is delivered to customers, the words "Mongol 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 one hundred per cent shellac gum cut in alcohol, the words "Mongol 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 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.

FEDERAL TRADE COMMISSION

v.

J. D. SMILEY, DOING BUSINESS UNDER THE NAME AND STYLE OF DIXIE TAILORS.