FEDERAL TRADE COMMISSION

v.

AJAX ROPE COMPANY, INC.

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

Docket 945—October 30, 1923.

SYLLABUS.

Where a corporation engaged in the sale of rope, made for it under contract by another concern, falsely represented in its advertising, letters, business cards, tags, stencils, and otherwise that it was the manufacturer of said rope; with the result that the trade and public were deceived and misled and purchasers were induced to buy such rope in the belief that they were buying directly from the manufacturer thereof and thereby saving the profits of a middleman:

Held, That such misrepresentation, 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 the Ajax Rope Co., Inc., hereinafter referred to as respondent, has been and is 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. Said respondent is a corporation organized under the laws of the state of Delaware with its principal office and place of business in the city of New York in the state of New York. It is now and at all times hereinafter mentioned has been engaged in the business of buying and selling various kinds of rope, cable and twine, and in the course of said business sells said products to wholesale and retail dealers throughout the several states and causes said products when sold, to be transported from their place of manufacture in the city of Brooklyn, state of New York, to the purchasers thereof at points in the various states of the United States. In the course and conduct of its said business said respondent is in competition with other individuals, partnerships and corporations engaged in the sale of said products in interstate commerce.

PAR. 2. Said respondent, in the course of its business as described in paragraph 1 hereof, causes said products sold by it to be manufactured by a manufacturer in Brooklyn, New York, according to said respondent's orders and specifications, and in the solicitation for purchasers of said products, said respondent advertises in prominent magazines and newspapers having interstate circulation, on letterheads, circular letters and business cards that said respondent is the "Makers of Manila, Sisal, Wire and Marline covered rope," and also "Makers of Werwell Drilling Cables" and also causes to be inserted in certain daily papers statements to the effect that said respondent operates "mammoth rope factories" in Brooklyn, New York, and has laboratories and an engineering department in connection with its said factories and uses other language to lead the reader to believe that said respondent is a manufacturer of said products when as a matter of fact the said respondent does not own, operate or control any factory engaged in the manufacture of rope, cable or twine, but on the other hand buys from said manufacturer on order as hereinbefore set forth.

PAR. 3. The words "Makers of Manila, Sisal, Wire and Marline Rope" and "Makers of Werwell Drilling Cables" signify and are understood by a substantial part of the trade and purchasing public to mean that said respondent is a manufacturer of said products and the use of said words and the other statements by said respondent, as described in paragraph 2 hereof, is calculated to and has the capacity and tendency to mislead and deceive many among the trade and the purchasing public and to induce them to purchase the said products of the said respondent in the belief that said respondent owns, controls or operates a factory in which it manufactures the products sold by it and that persons buying from said respondent are buying directly from the manufacturer of said products and thus saving the profits of the middlemen.

PAR. 4. There are a number of manufacturers of rope, cable and twine who are in competition with said respondent in the sale and distribution of said products in interstate commerce. There are also a number of wholesale distributors of said products who do not advertise or otherwise indicate to the public that they are manufacturers of said products.

PAR. 5. 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, the Federal Trade Commission issued and served a complaint upon the respondent, Ajax Rope Company, Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having entered its appearance by its attorney and filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of the said complaint and on behalf of said respondent, before an examiner of the Federal Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and the Commission, having heard argument of counsel and 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, Ajax Rope Company, Inc., is a corporation organized, existing, and carrying on business since January 1, 1920, under and by virtue of the laws of the State of Delaware, with its principal office in the City of New York, State of New York. It is engaged in the purchase of rope and the sale thereof to jobbers and dealers, and the public generally throughout the several States of the United States. It causes the rope so sold to be shipped from its place of manufacture in the City of Brooklyn, State of New York, to said customers at various points in the several States of the United States. In the regular course and conduct of its business respondent is in competition with other persons, partnerships and corporations, similarly engaged in the sale of rope to jobbers, dealers, and the public generally.

PAR. 2. On January 31, 1920, respondent entered into a contract with the Waterbury Company, a manufacturer of fiber and wire rope with its factories in Brooklyn, New York, whereby it was covenanted and agreed that the said Waterbury Company was to manufacture rope for respondent out of hemp to be supplied by respondent, and according to respondent's specifications, respondent agreed to pay the Waterbury Company certain rates per pound for all rope so manufactured. Respondent had and has no control over the said Waterbury Company, its employees, methods of manufacture, or business policies, nor does respondent own or operate any plant or factory for the production of rope, but depends for its entire supply upon the rope manufactured by the Waterbury Company under the terms of the said contract.

PAR. 2. Said respondent, in the course of its business as described in paragraph 1 hereof, causes said products sold by it to be manufactured by a manufacturer in Brooklyn, New York, according to said respondent's orders and specifications, and in the solicitation for purchasers of said products, said respondent advertises in prominent magazines and newspapers having interstate circulation, on letterheads, circular letters and business cards that said respondent is the "Makers of Manila, Sisal, Wire and Marline covered rope," and also "Makers of Werwell Drilling Cables" and also causes to be inserted in certain daily papers statements to the effect that said respondent operates "mammoth rope factories" in Brooklyn, New York, and has laboratories and an engineering department in connection with its said factories and uses other language to lead the reader to believe that said respondent is a manufacturer of said products when as a matter of fact the said respondent does not own, operate or control any factory engaged in the manufacture of rope, cable or twine, but on the other hand buys from said manufacturer on order as hereinbefore set forth.

PAR. 3. The words "Makers of Manila, Sisal, Wire and Marline Rope" and "Makers of Werwell Drilling Cables" signify and are understood by a substantial part of the trade and purchasing public to mean that said respondent is a manufacturer of said products and the use of said words and the other statements by said respondent, as described in paragraph 2 hereof, is calculated to and has the capacity and tendency to mislead and deceive many among the trade and the purchasing public and to induce them to purchase the said products of the said respondent in the belief that said respondent owns, controls or operates a factory in which it manufactures the products sold by it and that persons buying from said respondent are buying directly from the manufacturer of said products and thus saving the profits of the middlemen.

PAR. 4. There are a number of manufacturers of rope, cable and twine who are in competition with said respondent in the sale and distribution of said products in interstate commerce. There are also a number of wholesale distributors of said products who do not advertise or otherwise indicate to the public that they are manufacturers of said products.

PAR. 5. 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.

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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, Ajax Rope Company, Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having entered its appearance by its attorney and filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of the said complaint and on behalf of said respondent, before an examiner of the Federal Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and the Commission, having heard argument of counsel and 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, Ajax Rope Company, Inc., is a corporation organized, existing, and carrying on business since January 1, 1920, under and by virtue of the laws of the State of Delaware, with its principal office in the City of New York, State of New York. It is engaged in the purchase of rope and the sale thereof to jobbers and dealers, and the public generally throughout the several States of the United States. It causes the rope so sold to be shipped from its place of manufacture in the City of Brooklyn, State of New York, to said customers at various points in the several States of the United States. In the regular course and conduct of its business respondent is in competition with other persons, partnerships and corporations, similarly engaged in the sale of rope to jobbers, dealers, and the public generally.

PAR. 2. On January 31, 1920, respondent entered into a contract with the Waterbury Company, a manufacturer of fiber and wire rope with its factories in Brooklyn, New York, whereby it was covenanted and agreed that the said Waterbury Company was to manufacture rope for respondent out of hemp to be supplied by respondent, and according to respondent's specifications, respondent agreed to pay the Waterbury Company certain rates per pound for all rope so manufactured. Respondent had and has no control over the said Waterbury Company, its employees, methods of manufacture, or business policies, nor does respondent own or operate any plant or factory for the production of rope, but depends for its entire supply upon the rope manufactured by the Waterbury Company under the terms of the said contract.

PAR. 3. Respondent procures its supply of hemp through an individual broker, John C. Waterbury, who is also secretary and treasurer of the said Waterbury Company, and who buys all the hemp that is used by the said Waterbury Company in the manufacture of rope for all its trade, including respondent. The hemp purchased for respondent is delivered to the factory of the Waterbury Company and stored with other hemp, and only such hemp as is actually used in the rope delivered to respondent is paid for by it. Said Waterbury makes no charge for such services as purchaser of hemp. Respondent sends its orders for rope direct to the superintendent of the Waterbury factory, and he thereupon causes such rope to be manufactured and placed at the disposal of respondent.

PAR. 4. In the regular course and conduct of its business, respondent has represented and caused to be represented by means of advertisements, in publications having an interstate circulation, by letters, business cards, tags, stencil marks, and otherwise, that it was and is the manufacturer or maker of the rope sold and offered for sale by it. As a result of said representations, purchasers are led to believe and do believe that respondent is the maker or manufacturer of the rope which it sells, and are induced to purchase rope from respondent under the belief that they are purchasing direct from the manufacturer thereof, who is responsible for its actual construction, and also that they are therefore saving the profits of a middleman.

PAR. 5. Many large consumers of rope prefer to buy, and do buy, their supplies of rope directly from manufacturers, and several such consumers have purchased respondent's rope, under the belief that they were buying from the manufacturer thereof. There are a number of concerns which actually make the rope which they sell, and which compete with respondent.

PAR. 6. The said representations that respondent is the manufacturer of the rope which it sells and offers for sale are false and are calculated to, and do, mislead and deceive the trade and the public generally.

CONCLUSION.

The above practices of said respondent under the conditions and circumstances as set forth in the foregoing findings of fact, 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 upon the complaint of the Commission, the answer of respondent, the testimony and evidence,

and the argument of counsel, and the Commission having made its findings as to the facts with its conclusion that respondent, Ajax Rope Company, Inc., has violated the provision 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, its officers, agents, representatives and employees, cease and desist from representing or causing to be represented, by advertisements, labels, tags, stencil marks, circulars, verbal statements, or in any other manner—

1. That the respondent, Ajax Rope Company, Inc., is the maker or manufacturer of the rope which it sells and offers for sale, unless and until said respondent shall engage in the manufacture of such rope; or

2. That the respondent, Ajax Rope Company, Inc., is the maker or manufacturer of the rope which is made for it by the Waterbury Company of the City of Brooklyn, State of New York, either by virtue of contract obligations or in any other manner.

It is further ordered, That respondent, Ajax Rope Company, Inc., shall within sixty (60) days from the date of service of this order upon it, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION

v.

BROWN-PHELPS HOSIERY COMPANY.