

H. MAILENDER, TRADING UNDER THE UNINCORPORATED NAMES AND STYLES OF "M. RIDER & COMPANY," "QUEEN CITY SALVAGE COMPANY," "ARMY GOODS HEADQUARTERS," "ARMY-NAVY STORE," AND "ARMY GOODS STORE."

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

Docket 1011—November 14, 1923.

SYLLABUS.

Where an individual engaged as "Army Goods Headquarters," "Army-Navy Store," and "Army Goods Store" in the sale to the public in various cities of Army and Navy surplus supplies and also of ordinary commercial merchandise, but professedly as a dealer in the former, which he represented to the public as having been purchased from the Army and Navy, made in accordance with Government specifications, and of high quality but sold at comparatively low prices due to the necessity of reducing the large surplus thereof;

- (a) Advertised said supplies and merchandise together without adequately disclosing that the latter was not in fact part and parcel of the former, with the capacity and tendency thereby to mislead and deceive the purchasing public into believing such ordinary commercial merchandise to be part of the aforesaid Army and Navy surplus supplies and to induce the purchase thereof in such belief;
- (b) Advertised, described, labeled and sold as "U. S. Marine Paint" and "U. S. Quality Paint" a paint neither made for the Government nor in accordance with its specifications, nor constituting Army or Navy surplus, with the effect of misleading and deceiving purchasers thereof and the public into believing said paint to have been connected in some way with the Government and to be of high quality but sold at comparatively low prices made possible by the Government's necessity for disposing of large surplus stocks accumulated during the war, and of thus securing an undue and unfair preference for said paint in the trade and among the purchasing public;

Held, That such false and misleading advertising, and such misbranding and mislabeling, under the circumstances set forth, constituted unfair methods of competition.

Mr. W. A. Sweet for the Commission.

Mr. Leonard H. Freiberg of Cincinnati, Ohio, for respondent.

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 H. Mailender, trading under the unincorporated names and styles of "M. Rider & Company," "Queen City Salvage Company," "Army Goods Headquarters," "Army-Navy Store," and "Army Goods Store," 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 person engaged in the business of purchasing, selling and distributing men's work and dress clothing, army goods, surplus army and navy property and other goods, wares and merchandise, having his principal office and place of business at 113 Sycamore Street, in the City of Cincinnati, and State of Ohio, and operating as a part of his said business branch stores at Indianapolis, Indiana; Fort Wayne, Indiana; and Huntington, West Virginia. He conducts, and at all times hereinafter mentioned has conducted, his said business as follows: The said business is carried on and conducted by respondent under the unincorporated trade names and styles of "M. Rider & Company," "Queen City Salvage Company," "Army Goods Headquarters," "Army-Navy Store," and "Army Goods Store." He purchases the said commodities in which he deals from manufacturers and other sellers at points in the various States of the United States, and causes said commodities to be transported from said points of purchase in commerce among the several States to his said several places of business and he also causes such commodities to be shipped direct from said points of purchase to his customers located in States other than the States in which such respective shipments originate. Respondent causes advertisements to be published in newspapers of general circulation throughout the United States, and he also sends circulars, letters and other literature from his said places of business to his customers and prospective customers throughout the various States. In and by means of said newspaper advertisements, circulars, letters, and other literature he describes and offers for sale the said commodities in which he deals, and through such means he receives orders for the purchase of said commodities from customers located throughout the various States, particularly the States of Ohio, Indiana, West Virginia, Tennessee and the States adjacent thereto. Pursuant to the said orders received by him, respondent causes the commodities so sold to be transported from his said several places of business in the States of Ohio, Indiana and West Virginia, through and into various States other than the States in which such respective shipments originate to the

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purchasers thereof. In so carrying on and conducting his said business respondent is, and at all times herein mentioned has been, engaged in interstate commerce among the several States and has been and is in direct, active competition with other persons, partnerships and corporations similarly engaged in commerce among the several States, and with the trade generally.

PAR. 2. In the course and conduct of his said business as described in paragraph 1 hereof, respondent advertises and holds himself out to the public as a dealer in army goods and war surplus property and he represents to the public that such merchandise so dealt in by him (a) are surplus army and navy supplies, (b) were purchased from the United States Army or United States Navy, (c) were made in accordance with specifications of the United States Government, and (d) are of high quality, but are being sold at low prices because of the necessity of reducing the large quantity of surplus supplies of the Army and Navy of the United States, manufactured for the use of the Army and Navy of the United States, whereas in truth and in fact, many of the articles dealt in and sold by respondent as aforesaid under said representation are ordinary commercial merchandise and are not surplus army or navy supplies and such commodities were not purchased from or manufactured for the United States Army or Navy, nor were said commodities made in accordance with specifications of the United States Government. The said representations as alleged above in this paragraph are false and misleading and have the capacity and tendency to mislead and deceive the purchasing public into the belief that said representations were and are true in fact, and thereby to cause the purchasers of said ordinary commercial merchandise so dealt in by respondent to purchase same in that belief.

PAR. 3. That respondent, in the course and conduct of his said business and trading under the names and styles of "M. Rider & Company," "Queen City Salvage Company," "Army Goods Headquarters," "Army-Navy Store," and "Army Goods Store," as described in paragraph 1 hereof, has sold and distributed for more than one year last past and is still selling and distributing to purchasers in the various States of the United States a certain paint, which is labelled "U. S. Marine Paint, One Gallon, U. S. Standard," and respondent causes said paint to be advertised, described and offered for sale through advertisements published in newspapers of general circulation throughout the United States and in circulars, letters and other literature which he sends to customers and prospective customers throughout the various States of the United States. In said newspaper advertisements, circulars, letters and other litera-

ture respondent describes and represents said paint as "U. S. Marine Paint" and as "U. S. Quality Paint." Said paint so represented and sold is obtained by respondent from the Forest City Paint & Varnish Company, division of the Glidden Company of Cleveland, Ohio, and other manufacturers. The said paint was not manufactured for the United States Navy or for any other branch of the United States Government, and said paint is not manufactured in accordance with specifications of the Government of the United States, nor is said paint surplus army or navy stock. The advertising, describing, labeling and selling of said paint as aforesaid as "U. S. Marine Paint" and "U. S. Quality Paint," by respondent trading as aforesaid under the unincorporated trade names and styles of "Queen City Salvage Company," "Army-Navy Store," "Army Goods Store" and "Army Goods Headquarters," is calculated, has the capacity and tendency, to, and did, mislead and deceive the purchasers of said paint and the public into the belief that said paint is United States Navy surplus stock, or was made for the United States Navy, or made according to specifications of the United States Government, and that said paint is of high quality, but offered for sale and sold at a low price because of the necessity of reducing the large surplus stocks of supplies of the United States Navy, and purchasers of said paint were and are thereby induced to purchase same in that belief.

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, the Federal Trade Commission issued and served a complaint upon the respondent H. Mailender (whose full name is Harry Mailender), trading under the unincorporated names and styles of "M. Rider & Company," "Queen City Salvage Company," "Army Goods Headquarters," "Army-Navy Store" and "Army Goods Store," charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered his appearance by his attorney and filed his answer herein, an agreed statement of facts was made, executed and filed in this proceeding in which it is stipulated and

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agreed by and between respondent and counsel for the Commission that the Federal Trade Commission may take such agreed statement of facts as the facts in this proceeding before the Commission, and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto; and that said Commission may proceed further upon said complaint to make its report in said proceeding stating its findings as to the facts and conclusion, and entering its order disposing of the proceeding without hearing oral arguments.

And the Federal Trade Commission having duly considered the record and being now fully advised in the premises makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a person engaged in the business of purchasing, selling and distributing men's work and dress clothing, Army goods, surplus Army and Navy property and other goods, wares and merchandise, having his principal office and place of business at 113 Sycamore Street, in the City of Cincinnati, and State of Ohio, and operating as a part of his said business branch stores at Indianapolis, Indiana; Fort Wayne, Indiana; Huntington, West Virginia; Logan, West Virginia; and Washington Court House, Ohio. He conducts, and at all times hereinafter mentioned has conducted, his said business as follows: The said business is carried on and conducted by respondent under the unincorporated trade names and styles of "M. Rider & Company" and "Queen City Salvage Company." He purchases the said commodities in which he deals from manufacturers and other sellers at points in the various States of the United States, and causes said commodities to be transported from said points of purchase in commerce among the several States to his said several places of business and he also causes such commodities to be shipped direct from said points of purchase to his customers located in States other than the States in which such respective shipments originate. Respondent causes advertisements to be published in newspapers of general circulation throughout the United States, and he also sends circulars, letters and other literature from his said places of business to his customers and prospective customers throughout various States. In and by means of said newspaper advertisements, circulars, letters and other literature he describes and offers for sale the said commodities in which he deals, and through such means he receives orders for the purchase of said commodities from customers located throughout the various States, particularly the States of Ohio, Indiana, West Virginia, Tennessee

and the States adjacent thereto. Pursuant to the said orders received by him, respondent causes the commodities so sold to be transported from his said several places of business in the States of Ohio, Indiana and West Virginia, through and into various States other than the States in which such respective shipments originate to the purchasers thereof. In so carrying on and conducting his said business respondent is, and at all times herein mentioned has been, engaged in interstate commerce among the several States and has been, and is, in direct, active competition with other persons, partnerships and corporations similarly engaged in commerce among the several States, and with the trade generally.

PAR. 2. In the course and conduct of his said business as described in paragraph 1 hereof, respondent advertises his said several places of business at Indianapolis, Indiana; Fort Wayne, Indiana; Huntington, West Virginia; Logan, West Virginia; and Washington Court House, Ohio, as the "Army Goods Headquarters," "Army-Navy Store," and "Army Goods Store," and holds himself out to the public as a dealer in Army goods and War surplus property; and he represents to the public, and causes the public to believe, that such goods, wares, and merchandise so dealt in by him (a) are surplus Army and Navy supplies, (b) were purchased from the United States Army or United States Navy, (c) were made in accordance with specifications of the United States Government, and (d) are of high quality and are being sold at comparatively low prices, which low prices are possible because of the necessity of reducing the large quantity of surplus supplies of the Army and Navy of the United States. The respondent deals in general merchandise in addition to Army and Navy goods and sells such merchandise in his several places of business referred to herein, and offers such general merchandise for sale in advertisements issued by him, in which advertisements he also offers for sale the Army and Navy goods and war surplus property in which he deals, copies of which advertisements are hereto annexed and made a part hereof.¹ Such general merchandise is not surplus Army and Navy supplies and was not purchased from or manufactured for the United States Army or Navy, nor made in accordance with specifications of the United States Government. Respondent in carrying on and conducting his said business under the foregoing representations failed and neglected to adequately disclose to the purchasing public that the said ordinary commercial articles sold as aforesaid were not in fact part and parcel of said surplus Army or Navy supplies. The said representations, under the circumstances described and set forth above

¹ Not printed.

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in this paragraph, are misleading and deceptive and have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said ordinary commercial merchandise so offered and sold by respondent is part and parcel of said surplus Army or Navy supplies dealt in by respondent, and thereby cause purchasers of said ordinary commercial merchandise to purchase same as and for Army or Navy surplus supplies and in the belief that said ordinary commercial merchandise was purchased from, or manufactured for, the United States Army or Navy, and/or were made in accordance with specifications of the United States Government.

PAR. 3. The respondent in the course and conduct of his said business as described in paragraph 1 hereof, and trading under the names and styles of "M. Rider & Company" and "Queen City Salvage Company," and advertising and describing his said several places of business as the "Army Goods Headquarters," "Army-Navy Store" and "Army Goods Store," as set forth in paragraph 2 hereof, sells and distributes, and has sold and distributed for more than one year last past, to purchasers in various States of the United States, a certain paint which is labeled and branded "U. S. Marine Paint, One Gallon, U. S. Standard," and respondent causes said paint to be advertised, described and offered for sale through advertisements published in newspapers of general circulation throughout the United States, and in circulars, letters and other literature which he sends to customers and prospective customers throughout various States of the United States. In the newspaper advertisements, circulars, letters and other literature respondent describes and represents said paint as "U. S. Marine Paint and as U. S. Quality Paint." The said paint was not manufactured for the United States Navy or for any other branch of the United States Government, and said paint is not manufactured in accordance with specifications of the Government of the United States, nor is said paint surplus Army or Navy stock. The advertising, describing, labeling and selling of said paint by respondent, as aforesaid, as "U. S. Marine Paint" and "U. S. Quality Paint" has the capacity and tendency to, and did, mislead and deceive purchasers of said paint and the public into the belief that said paint is United States Government surplus stock, and/or was made for the United States Navy, and/or made according to specifications of the United States Government; and that said paint is of high quality, but is offered for sale and sold at comparatively low prices made possible by the necessity of the Government's disposing of large surplus stock accumulated by it during the World War; thus securing in the trade and among the purchasing public an undue and unfair preference for said paint.

CONCLUSION.

The practices of said respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation 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.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the statement of facts agreed upon by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the respondent has 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 respondent H. Mailender (whose full name is Harry Mailender), trading under the unincorporated names and styles of "M. Rider & Company" and "Queen City Salvage Company," his agents, representatives, servants and employees, cease and desist from directly or indirectly:

(1) Selling or offering for sale in interstate commerce, in places of business designated and described by him as "Army Goods Headquarters," "Army-Navy Stores" or "Army Goods Store," ordinary commercial merchandise or commodities as surplus Army and Navy supplies or Government supplies, when, in truth and in fact, such merchandise or commodities were not purchased from or manufactured by or for the United States Government, or made in accordance with specifications or requirements of the United States Government;

(2) Advertising or describing in newspapers, circulars or other literature, ordinary commercial merchandise or commodities as surplus Army and Navy supplies, when, in truth and in fact, such merchandise and commodities were not purchased from or manufactured for or by the United States Government, or made in accordance with specifications or requirements of the United States Government;

(3) Employing or using on labels or as brands for paint manufactured, sold or offered for sale by him in interstate

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commerce, or upon the containers in which said paint is delivered to purchasers, the words "U. S. Marine Paint, One Gallon U. S. Standard," unless, in truth and in fact, said paint was purchased from or manufactured by or for the United States Government, or prepared in accordance with specifications or requirements of the United States Government;

(4) Using or displaying in advertising matter, circulars or other literature used in connection with the sale of paint manufactured, sold or offered for sale by him in interstate commerce, the words "U. S. Marine Paint" or "U. S. Quality Paint," unless, in truth and in fact, said paint was purchased from or manufactured by or for the United States Government, or prepared in accordance with specifications or requirements of the United States Government.

It is further ordered, That the respondent within thirty (30) days from the notice hereof file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with and conformed to.

H. O. GREENBAUM.

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