

FEDERAL TRADE COMMISSION

v.

H. O. GREENBAUM, TRADING AS TECHNICAL COLOR & CHEMICAL WORKS, AND VICTORY SHELLAC WORKS.

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

Docket 1056—November 14, 1923.

SYLLABUS.

Where an individual engaged in the manufacture and sale of a product which as made at times contained a small percentage of pure shellac gum and in some instances no shellac gum whatever,

- (a) Labeled, advertised, and sold the same under the names "Red Devil Shellac" and "Victory White Shellac"; and
- (b) Represented on the labels of the containers that the contents were guaranteed to be pure shellac dissolved in alcohol, without indicating the presence of other substances;

With the capacity, tendency and effect of deceiving a substantial part of the purchasing public with reference to the composition of said product and of inducing purchases in such mistaken belief:

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

Mr. W. A. Sweet for the Commission.

Mr. J. T. Watkins of Washington, D. C., 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. O. Greenbaum, trading as Technical Color & Chemical Works, and Victory Shellac Works, 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 an individual trading under the names of Technical Color & Chemical Works and Victory Shellac Works, with its plant and general office located at 382 Hudson St., New York City, state of New York. He is, and at all times hereinafter mentioned has been engaged in the business of manufacturing,

Complaint.

7 F. T. C.

selling and distributing paint, 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 his business respondent causes his said products, when sold, to be transported from the state of New York to, into and through other states of the United States and the District of Columbia to the purchasers thereof. At all times hereinafter mentioned said respondent is and has been in competition with other persons, partnerships and corporations engaged in a similar business in interstate commerce.

PAR. 2. Respondent in the course and conduct of his said business has caused, for more than one year last past and still causes to be manufactured and sold to jobbers, dealers and the purchasing public throughout the United States by means of traveling salesmen, mail orders and otherwise, a product composed of a small percentage of pure shellac gum and in some instances no shellac gum whatever, labeled, branded and advertised as "Red Devil Shellac" and "Victory White Shellac," representing in the labels on the containers of said products that the contents thereof are guaranteed to be pure shellac dissolved in denatured alcohol without indicating in any way whatever on such labels and in such advertisements that said product contained any gum other than pure shellac gum. The said labels and advertisements of said product by respondent, as aforesaid, are false and misleading 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 labeled, branded and advertised is composed only of genuine shellac gum dissolved in alcohol and to induce said purchasers to purchase said product in that belief. Shellac or shellac varnish as commercially known and sold to jobbers, dealers and the purchasing public is a product composed solely of genuine shellac gum dissolved in alcohol and is so understood by said jobbers, dealers and the purchasing public.

PAR. 3. There are engaged in selling in commerce among the several States of the United States a large number of manufacturers and distributors of varnish composed only of genuine shellac gum, cut in alcohol, who advertise, label and sell the same under the name of "Shellac" and also many manufacturers and distributors of shellac substitutes who do not 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 cut in 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.

REPORTS, 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. O. Greenbaum, 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 and filed an answer herein, and made, executed and filed an agreed statement of facts in which it is stipulated and agreed by the respondent 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 or in opposition to the 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. Respondent is an individual trading under the name of Technical Color & Chemical Works and Victory Shellac Works, with his plant and general office located at 382 Hudson St., New York City, State of New York. He is, and at all times hereinafter mentioned has been, engaged in the business of manufacturing, selling and distributing paint, 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 his business, respondent causes his said products, when sold, to be transported from the State of New York to, into, and through other states of the United States, and the District of Columbia to the purchasers thereof. At all times hereinafter mentioned said respondent is and has been in competition with other persons, partnerships, and corporations engaged in a similar business in interstate commerce.

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

Order.

7 F. T. C.

PAR. 3. There are engaged in selling in commerce among the several states of the United States, a large number of manufacturers and distributors of varnish composed only of genuine shellac gum cut in alcohol, who advertise, label, and sell the same under the name of "shellac," and also many manufacturers and distributors of shellac substitutes who do not 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 cut in alcohol.

PAR. 4. Respondent, in the course and conduct of his said business, in the month of September, 1922, and for some time prior thereto, caused to be manufactured and sold to jobbers, dealers, and the purchasing public throughout the United States by means of traveling salesmen, mail orders, and otherwise, a product composed of a small percentage of pure shellac gum and, in some instances, no shellac gum whatever, labelled, branded, and advertised as "Red Devil Shellac" and "Victory White Shellac," representing in the labels on the containers of said products that the contents thereof are guaranteed to be pure shellac dissolved in denatured alcohol without indicating in any way whatever on such labels and in such advertisements that said product contained any gum other than pure shellac gum.

PAR. 5. The brands, labels, and advertisements containing the words "Red Devil Shellac" and "Victory White Shellac," used by the respondent in the sale of the product manufactured, sold and shipped by him and upon the containers thereof, 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 sold, labeled, branded and advertised by the respondent is composed solely of genuine shellac gum dissolved in alcohol and to induce such purchasers to purchase same in that belief.

CONCLUSION.

The practices of the said respondent, 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 answer of the

49

Order.

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. O. Greenbaum, trading under the names and styles of Technical Color & Chemical Works and Victory Shellac Works, his 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 "Red Devil Shellac," "Victory White 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 his products in interstate commerce, except when such products contain one hundred per cent shellac gum cut in alcohol, the words "Red Devil Shellac", "Victory White 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 substances, ingredients, or gums 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 (60) days from the date of this order, his report in writing, stating the manner and form in which this order has been conformed to, and shall attach to such report two (2) copies of all circulars, advertisements, devices, or labels distributed or displayed to the public by the respondent in connection with the sale of his product in interstate commerce subsequent to the date of this order.

Complaint.

7 F. T. C.

FEDERAL TRADE COMMISSION

v.

AMERICAN TURPENTINE COMPANY, A CORPORATION,
TRADING UNDER THE NAME AND STYLE OF NORTH
AMERICAN FIBRE PRODUCTS COMPANY.