

AMERICAN FIBRE PRODUCTS COMPANY.

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

Docket 1075—November 14, 1923.

SYLLABUS.

Where a corporation dealing in roofing paints and other products under the brand name "HORNBLLENDE"; under the caption "Again HORNBLLENDE Wins in Competitive Test to Secure the Business from the State of Ohio" set forth in its advertisements what purported to be, but was not, a true copy of the results of a comparative chemical analysis of one of its own products and of a competitor's product by the Ohio State Chemist, as communicated by him to the secretary of a City Board of Purchase, the fact being that said advertisement did not truthfully reproduce said letter, but contained a false and misleading statement; with the effect of misleading and deceiving the purchasers of its products and with the capacity and tendency to injure said competitor and render it less able to compete:

Held, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

Mr. M. Markham Flannery for the Commission.

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 American Turpentine Company, a corporation, trading as North American Fibre Products Company, and more particularly hereinafter described and 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, issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, American Turpentine Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business in the city of Cleveland, in said State. Respondent was at all times hereinafter mentioned, and still is, engaged in the business of purchasing in wholesale quantities, paints, varnishes, enamels, roofing material, roofing paint and similar products, and in the conduct of its business as a wholesaler or jobber has adopted

and utilized the trade name North American Fibre Products Company in the sale of its said products in interstate and foreign commerce in and throughout the United States and portions of Canada, causing its products when so sold to be transported from the State of Ohio, to purchasers located in other States of the United States, and provinces of Canada, and there is now and was at all times hereinafter mentioned, a constant current of trade and commerce in said products sold by said respondent, between and among the various States of the United States, and the United States and Provinces of Canada. In the course of its business, respondent was at all times hereinafter mentioned and still is, in competition with other individuals, firms, partnerships and corporations similarly engaged in interstate and foreign commerce.

PAR. 2. That said respondent, trading as aforesaid, in the course and conduct of its business for more than one year last past has printed or caused to be printed, circulated and published in interstate and foreign commerce, an advertisement of and concerning its products sold under the trade name or brand "Horneblende," and the products of a competitor known to the trade or sold under the trade name or brand "Arco," which said advertisement was in the following words and figures, to wit:

Again HORNEBLENDE Wins in Competitive Test to Secure the Business from the State of Ohio!

HORNEBLENDE WON

MAY 7, 1919

Mr. Louis J. Guthke, Secretary,
City Board of Purchase
City of Columbus, Ohio.

DEAR SIR:

The following are the results of analyses of two samples of roof paint from the Fire Department, marked Sample No. 1 and No. 2:

	Atlantic Refining Co. "Arco" Sample No. 1	Horne- blende Sample No. 2
Soluble in Carbon Bisulphide.....	82.54%	59.23%
Insoluble in Carbon Bisulphide.....	17.46%	40.77%
Flash Test (Open Cup).....	178° F.	270° F.
Fire Test (Open Cup).....	200° F.	340° F.
Sample No. 1		

Material is practically insoluble in gasoline. Insoluble portion is sand and free carbon. Material has a tarry odor. When heated to about 150° F. it boils and froths badly. Becomes soft.

Complaint.

7 F. T. C.

Sample No. 2

Insoluble material appears to be nearly all asbestos fibre with a solution of kauri gum. The odor resembles that of linseed oil and turpentine, similar to paint, upon heating, no softening appears to take place, probably due to large amount asbestos present. Very soluble in gasoline.

Yours very truly,

WATER PURIFICATION WORKS
By CHARLES P. HOOVER
Chemist in Charge.

This is an exact copy of letter received from Chas. P. Hoover, Chemist in charge of the State of Ohio.

That the advertisement above set forth was printed, published and circulated as aforesaid and represented by said respondent to include "an exact copy of letter received from Chas. P. Hoover, Chemist in charge of the State of Ohio," when in truth and in fact said letter set forth under the above caption and included in said advertisement is not an exact or true copy of the letter as written by Charles P. Hoover to Louis J. Guthke, under date of May 7, 1919, which letter was in the following words and figures, to wit:

WATER SOFTENING AND PURIFICATION WORKS

CHARLES P. HOOVER
Chemist in Charge

COLUMBUS, OHIO,
May 7, 1919.

Mr. LOUIS J. GUTHKE, Secretary,
City Board of Purchase,
City of Columbus, Ohio.

DEAR SIR:

The following are the results of analyses of two samples of roof paint from the Fire Department, marked Sample No. 1 and No. 2.

	Sample No. 1	Sample No. 2
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Fire Test (Open Cup).....	340° F	200° F

Sample No. 1:

Material is practically insoluble in gasoline. Insoluble portion is sand and free carbon. Material has tarry odor. When heated to about 150° F, it boils and froths badly. Becomes very soft.

Sample No. 2:

Insoluble material appears to be nearly all asbestos with a small amount of sand. The odor resembles that of linseed oil and turpentine, similar to paint, upon heating. No softening appears to take place, probably due to large amount of asbestos present. Very soluble in gasoline.

Yours very truly,

WATER PURIFICATION WORKS,
By CHARLES P. HOOVER,
Chemist in Charge.

PAR. 3. That the circulation and publication of the advertisement aforesaid in interstate and foreign commerce by said respondent has the capacity and tendency to mislead and deceive the purchaser, and/or does mislead and deceive the purchaser of respondent's product into the belief that said advertisement included a true and exact copy of a letter from Charles P. Hoover containing a chemical analysis of said respondent's product and the product of a competitor, when in truth and in fact said letter included in said advertisement circulated and published by respondent as aforesaid, is not a true and exact copy of a letter from Charles P. Hoover containing the chemical analysis of said respondent's product and the product of a competitor, and that respondent's said false and misleading statements as contained in said advertisement tend to injure respondent's competitor, Atlantic Refining Company, and render said competitor less able to compete with said respondent in the sale of its products in interstate and foreign commerce.

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, American Turpentine Company, trading under the name and style of North American Fibre Products Company, 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 and filed its answer herein, and having made, executed and filed an agreed statement of the 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, with such agreed statement of facts, 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 arguments in support of same; 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.

7 F. T. C.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, American Turpentine Company, is a corporation, organized, existing and doing business under any by virtue of the laws of the State of Ohio, with its principal office and place of business in the city of Cleveland, in said State. Respondent was at all times hereinafter mentioned, and still is, engaged in the business of purchasing in wholesale quantities, paints, varnishes, enamels, roofing material, roofing paint and similar products, and in the conduct of its business as a wholesaler or jobber has adopted and utilized the trade name, North American Fibre Products Company, in the sale of its said products in interstate and foreign commerce in and throughout the United States and portions of Canada, causing its products, when so sold, to be transported from the State of Ohio to purchasers located in other States of the United States and the Provinces of Canada; and there is now, and was at all times hereinafter mentioned, a constant current of trade and commerce in said products sold by said respondent, between and among the various States of the United States, and the United States and the Provinces of Canada. In the course of its business, respondent was at all times hereinafter mentioned, and still is, in competition with other individuals, firms, partnerships and corporations similarly engaged in interstate and foreign commerce.

PAR. 2. That said respondent, trading as aforesaid, in the course and conduct of its business, for more than one year last past has printed or caused to be printed, circulated and published in interstate and foreign commerce, an advertisement of and concerning its products sold under the trade name or brand "HORNEBLENDE," and the products of its competitor, known to the trade, or sold under the trade name or brand, "ARCO," which said advertisement was in the following words and figures, to wit:

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Sample No. 2:

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Findings.

7 F. T. C.

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CHARLES P. HOOVER,
Chemist in Charge.

COLUMBUS, OHIO,
May 7, 1919.

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City Board of Purchase,
City of Columbus, Ohio.

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PAR. 3. That the circulation and publication of the advertisement aforesaid in interstate and foreign commerce by said respondent has the capacity and tendency to mislead and deceive the purchaser, and/or does mislead and deceive the purchaser of respondent's products into the belief that said advertisement included a true and exact copy of a letter from Charles P. Hoover, containing a chemical analysis of said respondent's product and the product of a competitor, when, in truth and in fact, said letter included in said advertisement circulated and published by respondent, as aforesaid, is not a true and exact copy of a letter from Charles P. Hoover containing a chemical analysis of said respondent's product and the product of a competitor, and that respondent's said false and misleading statement, as contained in said advertisement, tended to injure respondent's competitor, Atlantic Refining Company, and render said competitor less able to compete with said respondent in the sale of its product in interstate and foreign commerce.

PAR. 4. There are many wholesalers and jobbers of paints, varnishes and roofing material who, in their advertisements actually and truthfully set forth an analysis of the products which they sell.

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 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 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 purpose",

It is now ordered, That the respondent, American Turpentine Company, trading under the name and style of North American Fibre Products Company, and its officers, directors, agents, representatives, servants and employees, do cease and desist:

From circulating or publishing, or causing to be circulated or published, in the form of circulars or otherwise, advertisements offering products for sale, which advertisements do not truthfully describe such products;

From circulating or publishing in such advertisements or otherwise, a purported analysis of paints or other products, which is not, in fact, an accurate and truthful analysis of such products.

Respondent is further ordered, To file a report in writing with the Commission, sixty (60) days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

