

Complaint.

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FEDERAL TRADE COMMISSION

v.

ATLANTIC COMB 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 920—February 16, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of toilet articles composed in whole or in part of nitrated cellulose or pyroxylin plastic, commercially known as "celluloid," "pyralin" and by other names, and resembling ivory in color and general appearance; in disregard of the collective action of members of the industry condemning such use of the word, designated such articles in its advertising matter descriptive thereof as "Princess White Ivory Toilet Ware," with the capacity and tendency to mislead and deceive the purchasing public and induce the purchase of said products as and for articles made in whole or in part of ivory:

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

Mr. William C. Reeves for the Commission.

Mr. Henry Woog of New York City, 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 the Atlantic Comb 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 a corporation organized under the laws of the State of New York, with principal office and place of business in the City of New York, in said State. It is now and at all times hereinafter mentioned has been engaged in the manufacture and sale of toilet articles, in wholesale quantities, and in the conduct of its business causes said toilet articles so made and sold by it to be transported to the purchasers thereof, from the State of New York through and into other States of the United States. In the course of said business respondent continuously has been and is

now in competition with other persons, partnerships and corporations engaged in similar business in interstate commerce.

PAR. 2. Respondent in the course of its business as described in paragraph 1 hereof, manufactures and sells toilet articles composed of nitrated cellulose or pyroxylin plastic, known commercially as "celluloid," "pyralin," "fibrelloid," "viscoloid," and by other names; that some of the articles so manufactured and sold by respondent resemble ivory in color and general appearance, and respondent as a means of bringing such products to the attention of the purchasing public and enhancing the sale thereof distributes and has distributed advertising matter to its customers and to prospective customers and the trade, generally, in which advertising matter, such articles are described as "White Ivory," and the use of such advertising matter and the reproduction of same, by retail dealers through whom such articles have been resold to the consuming public, in the usual course of retail trade, was intended and calculated by respondent to mislead and deceive the consuming public as to the quality and value of such articles, and such advertising matter has the capacity and tendency to mislead and deceive the public and to induce a substantial portion of the consuming public to purchase said articles upon the erroneous belief that such articles are made of ivory in whole or in part.

PAR. 3. There are a considerable number of competitors of respondent, who manufacture toilet articles composed of the basic materials known commercially as "celluloid," "pyralin," "fibrelloid," "viscoloid," etc., which materials resemble ivory in color and general appearance, and which competitors advertise and brand their products, sold in competition with those of respondent, as "Ivory Colored," "Imitation Ivory," or with words of like import, coupled with the name of the material of which the articles were composed.

PAR. 4. That on May 17, 1920, a conference was held by representatives of the manufacturers of the basic material known as pyroxylin plastic, and manufacturers of and dealers in various articles made from such basic materials, which conference was called by the Federal Trade Commission to meet at its offices in Washington, D. C.; that at such conference a resolution was passed which condemned the use, as applied to articles made of pyroxylin plastic, of the word "Ivory" in any other than an adjective sense and then only when coupled with the name of the material, or some other proper qualifying term.

PAR. 5. The above alleged acts and things done by respondent are all to the prejudice of the public, and of respondent's competi-

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tors, 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 Atlantic Comb Works, 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, testimony was taken and evidence received, both in support of the charges stated in the complaint and on behalf of the respondent, before an examiner of the Federal Trade Commission theretofore duly appointed, which testimony was reduced to writing and filed in the office of the Commission; whereupon the examiner made his report with proposed findings as to the facts, to portions of which findings the respondent excepted; whereupon the matter came on for final hearing before the Commission, and the Commission having duly considered the report of the trial examiner, the exceptions thereto and the entire record, directed that the matter be referred back for further proof in support of the charges stated in the complaint; and thereafter, a stipulation as to additional facts was made and entered into by and between respondent and the chief counsel for the Commission; and the Commission now having considered the complaint, the answer thereto, the evidence adduced, the report of the trial examiner and exceptions thereto, and the stipulation as to additional facts, and being 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. That the respondent, Atlantic Comb Works, is a corporation organized under the laws of the State of New York, with its principal office in the City of New York, in said State, and it is now, and was at the time of the issuance of the complaint herein, and prior thereto, engaged in the business of manufacturing and selling toilet articles to jobbers and department stores, and has caused articles so sold by it to be transported to the purchasers thereof from the State of New York through and into other States of the United States, in due course of commerce among the States,

and in the conduct of its said business has been and is in direct competition with other corporations,* partnerships and individuals similarly engaged.

PAR. 2. That the respondent, in the course of its business as described in paragraph 1 hereof, has manufactured and sold toilet articles composed in whole or in part of nitrated cellulose or pyroxylin plastic known commercially as "celluloid," "pyralin," "fibrelloid," "viscoloid," and by other names; that some of the articles so sold by respondent resembled ivory in color and general appearance, and to the purchasers of such articles respondent, in the year 1920 and prior thereto, and to a limited extent in the year 1921, has furnished advertising matter descriptive of such articles and containing pictorial representations of the same, in which advertising matter said articles were described as "Princess White Ivory Toilet Ware"; that some of the jobbers who received such advertising matter from respondent used same in bringing the articles purchased from respondent to the attention of prospective customers among retail dealers in toilet articles, for the purpose of increasing the sale of the articles by inducing such retail dealers to purchase same; that some of the proprietors of department stores to whom respondent sold such articles, caused such advertising matter to be distributed to the general public; that the description of said articles in said advertising matter as "Princess White Ivory Toilet Ware" had the capacity and tendency to mislead and deceive the purchasing public and induce numerous persons to purchase such articles upon the mistaken belief that such articles were made in whole or in part of ivory, or had some or all of the qualities of ivory.

PAR. 3. That since the issuance of the complaint herein, and for more than eighteen months prior thereto, other manufacturers of toilet articles made in whole or in part of pyroxylin plastic, and which resembled ivory in color and general appearance, sold such articles in commerce among the States, in competition with similar articles manufactured and sold by respondent; that during such period said manufacturers, competitors of respondent, in their advertising matter descriptive of the articles so sold by them, used the word "Ivory" only in an adjective sense, and then only when coupled with the name of the material of which such articles were made, or with some other qualifying term.

PAR. 4. That on May 17, 1920, a conference was held by representatives of the manufacturers of the basic material known as "Pyroxylin Plastic" and manufacturers of and dealers in various articles made from such basic material, which conference was called

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by the Federal Trade Commission to meet at its offices in Washington, D. C.; that at such conference a resolution was passed which condemned the use, as applied to articles made from pyroxylin plastic, of the word "Ivory" in any other than an adjective sense, and then, only when coupled with the name of the material or some other qualifying term; that a representative of respondent was present at such conference and participated in its proceedings.

CONCLUSION.

The practices of the said respondent, under the circumstances and conditions set forth in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce and constitute a violation of the provisions of Section 5 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."

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, the testimony and evidence adduced, the report of the trial examiner and exceptions thereto, a stipulation as to additional facts and the briefs of counsel, and the Commission having made its report stating its findings as to the facts with its conclusion that 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, Atlantic Comb Works, its officers, directors, agents and employees, cease and desist from making use of any form of advertising matter in which articles manufactured and sold by it and composed in whole or in part of nitrated cellulose or pyroxylin plastics, known commercially as "celluloid," "pyralin," and by other names, are described as "Ivory" or "White Ivory".

It is further ordered, That the respondent, Atlantic Comb Works, shall, within sixty (60) days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set out.

KISSAL & KOKALIS.

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Complaint.

FEDERAL TRADE COMMISSION

v.

VICTOR K. KISSAL, AND PAUL KOKALIS, COPARTNERS
DOING BUSINESS UNDER THE NAME OF KISSAL &
KOKALIS.