

Complaint.

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FEDERAL TRADE COMMISSION

v.

PIONEER PAPER 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 472—February 29, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of a composition felt base roofing material containing no rubber and made in varying weights and thicknesses; respectively designated, advertised, labeled and sold the same as "rubber" roofing, and as one-ply, two-ply, and three-ply, as the case might be, in accordance with the practice of some manufacturers, but contrary to that of many others who had discontinued the same; with the capacity and tendency to mislead part of the trade and the general purchasing public in reference to the composition and manufacture of such roofing, and into believing that in purchasing the roofing of said corporation it was in fact buying a product composed wholly or partly of rubber and consisting of two or three plies, layers, or thicknesses, respectively, and with the intent and effect of inducing the purchase thereof in preference to the products of competitors:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. John R. Dowlan for the Commission.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that the Pioneer Paper Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in interstate commerce in violation of the provisions 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, Pioneer Paper Company, is and at all times hereinafter mentioned was a corporation organized, existing and doing business under and by virtue of the laws of the State of California, having its principal office and place of business in the city of Los Angeles, in said State, now and for more than two years last past engaged in the manufacture and sale of a composition felt-base roofing material and in the shipment thereof from its place of manufacture to purchasers thereof in other States of the

United States, and the District of Columbia, in direct competition with numerous other persons, copartnerships and corporations similarly engaged.

PAR. 2. That for a period of more than two years last past the respondent, in the conduct of its business of manufacturing, selling and shipping composition felt-base roofing material in interstate commerce as aforesaid, has used the word "rubber" in its labels, advertising and other printed matter to characterize and describe its said product; that said characterization or description is false and misleading in that said product contains no rubber in its composition, and has the effect of creating an impression and belief among the trade and general public that respondent's said product is composed wholly or partly of rubber and the further effect of inducing purchasers to give to said product an undue preference over similar products of competitors that are not so characterized and described.

PAR. 3. That for a period of more than two years last past the respondent, in the conduct of its business of manufacturing, selling and shipping composition felt-base roofing material in interstate commerce as aforesaid, has used the terms "one-ply," "two-ply," and "three-ply" to designate and describe the different degrees of thickness of its said product; that said designation or description is false and misleading in that said product in its different degrees of thickness consists of but one layer or ply, and has the effect of creating an impression and belief among the trade and general public that respondent's said product consists of so many separate layers of felt, and the further effect of inducing purchasers to give the said product an undue preference over similar products of competitors that are not so designated and described.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Pioneer Paper 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, a stipulation as to the facts was entered into by counsel for the Commission and respondent, to be taken in lieu of evidence, and thereupon this proceeding came on for final hearing, and the Commission, having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

Findings.

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FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Pioneer Paper Company, is and at all times hereinafter mentioned was a corporation organized, existing and doing business under and by virtue of the laws of the State of California, having its principal office and place of business in the city of Los Angeles, in said State now and for more than five years last past engaged in the manufacture and sale of a composition felt-base roofing material, which is hereinafter referred to as asphalt roofing, and in the shipment thereof from its place of manufacture to purchasers thereof in other States of the United States, and the District of Columbia, in direct competition with numerous other persons, copartnerships and corporations similarly engaged.

PAR. 2. The asphalt roofing above referred to as commonly made by respondent and the several manufacturers thereof was and is composed of a base of felt made of rag waste and of other materials impregnated and coated with asphalt. Respondent, in the conduct of its business and to market and distribute the asphalt roofing so manufactured and sold by it in commerce among the several states as aforesaid has applied and affixed, and now applies and affixes to the rolls of its said roofing labels designating and referring to such roofing and containing the trade name or brand under which such roofing is sold to and purchased by the trade and the purchasing public and ultimate consumers; respondent has issued and now issues samples of the said kinds or brands of its said asphalt roofing, said samples being small pieces of the roofing itself, enclosed in printed paper or cardboard covers; respondent also issues printed circulars and other advertising matter, advertising such asphalt roofing; a portion of the samples, circulars and other advertising matter so issued is by respondent sent and distributed to persons who are or might be interested in the purchase and subsequent use of asphalt roofing, and large quantities thereof are by respondent sent to dealers and others who are or might be interested in the purchase and subsequent sale of such roofing to be used by them in such subsequent sale to other retail dealers or/to the general purchasing public; and such samples, circulars and other advertising matter have reached, and now reach the general purchasing public through such means. For many years last past it has been the practice of several but not of all of the manufacturers of asphalt roofing to designate and describe the same as "rubber" roofing, notwithstanding the fact that there was and is no rubber used in the composition of such roofing. Many of the said manufacturers who have heretofore used the term "rubber" to designate and describe such as-

phalt roofing have within the past three years, because of its ambiguous and misleading character, ceased to use the term "rubber." Prior to the issuance of the complaint herein, the respondent likewise designated and described its said roofing as "rubber" roofing and displayed and used upon said labels so applied and upon said circulars and other advertising matter so distributed by it, the name or term "rubber" as part of the trade names and brands for its said roofing, examples of such use of the name or term "rubber" being the describing, branding and labeling of such roofing as "Pioneer Rubber Flaxine Roofing." It was, and is intended by respondent that the labels, sample covers, circulars and other advertising matter hereinbefore and hereinafter referred to and the contents thereof and statements therein should reach the general purchasing public in the manner hereinbefore described for the purpose of increasing the sale of respondent's roofing and inducing such purchasing public to choose and purchase the roofing manufactured by respondent in preference to the roofing of competitors of respondent; and said labels, sample covers, circulars and other advertising matter and the contents thereof and statements therein did induce the general public to choose and purchase respondent's said roofing in preference to the roofing of competitors of respondent.

The use by respondent of the word "rubber" as above described is a false and misleading characterization, description and designation of its asphalt roofing; has the tendency and capacity to create a false impression and belief among part of the roofing trade and the general public that respondent's said roofing and other roofing of the same type is composed wholly or partly of rubber and to deceive and mislead the general purchasing public and part of the trade into the belief that in purchasing respondent's said roofing it is, in fact, purchasing roofing composed wholly or partly of rubber; and did, in fact, materially assist in causing prospective purchasers of roofing to choose and purchase respondent's said roofing in preference to the roofing of competitors of respondent.

PAR. 3. Asphalt roofing, as commonly made by respondent and the several manufacturers thereof, always consisted and consists of one single piece of felt impregnated and coated as hereinbefore set forth; it is offered for sale and sold by respondent and is customarily offered for sale and sold by other manufacturers thereof in rolls which contain approximately 108 square feet, this quantity being customarily called by such manufacturers, and in the roofing trade generally, a "square"; it is customarily offered for sale and sold by respondent, and by the other manufacturers thereof in at least three approximate weights of 35 pounds, 45 pounds, and 55 pounds per square; and the different weights or thicknesses of such roofing

Conclusion.

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were and are made by using different weights and thicknesses of the single felt piece. For many years last past it has been the practice of several, but not all, of the manufacturers of asphalt roofing to designate and describe the different weights and thicknesses of such roofing by the terms "one ply," "two ply," and "three ply" notwithstanding the fact that such roofing consisted of one ply, layer or thickness only and did not and does not consist of two or more plies, layers or thicknesses of felt, superimposed one upon the other and made into one piece by impregnating, binding, or otherwise fastening together such plies, layers or thicknesses; many of said manufacturers of such roofing who have heretofore used the terms "one ply," "two ply," and "three ply" to designate and describe the different weights and thicknesses of such roofing, have within the past three years, because of their ambiguous and misleading character, ceased to use the terms "one ply," "two ply," and "three ply"; the respondent prior to the month of February in the year 1920 in the labels, circulars and other advertising matter hereinbefore referred to made it a practice to likewise use the terms "one ply," "two ply," and "three ply" to designate and describe the different weights and thicknesses of the asphalt roofing manufactured and sold by it, notwithstanding the fact that such roofing consisted of one single piece of felt impregnated and coated as aforesaid, and not of two or more plies, layers or thicknesses of felt superimposed one upon the other and made into one piece.

The use by respondent of the words "two ply" and "three ply," as above described, is a false and misleading designation and description of its asphalt roofing; has the tendency and capacity to create a false impression and belief among part of the roofing trade and the general public that respondent's said roofing and other roofing of the same type is composed of two or more plies, layers or thicknesses, and to deceive and mislead the general purchasing public and part of the trade into the belief that in purchasing respondent's said roofing, it is, in fact, purchasing a roofing composed of two or more plies, layers or thicknesses; and did, in fact, materially assist in causing prospective purchasers of roofing to choose and purchase respondent's said roofing in preference to the roofing of competitors of respondent.

CONCLUSION.

The practices of the respondent, under the conditions and circumstances described in the foregoing findings as to the facts, 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."

MODIFIED ORDER TO CEASE AND DESIST.¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the stipulation as to the facts entered into by counsel for the Commission and the respondent, 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 respondent, Pioneer Paper Company, its agents, servants, employees and representatives do cease and desist—

From employing or using in connection with the sale of roofing material not composed of rubber the word "Rubber," alone or in combination with any other word or words to describe its product; (a) in circulars, booklets or other advertising matter; or (b) as, or in connection with, or as part of, a trade name or brand for such roofing; or (c) on labels, covers or wrappers for, or on rolls of, such roofing; and

From employing or using in connection with the sale of roofing material not composed of two or more plies, layers or thicknesses the words "two ply" or "three ply," alone or in combination with any other word or words to describe its product; (a) in circulars, booklets or other advertising matter; or (b) as, or in connection with, or as part of, a trade name or brand for such roofing; or (c) on labels, covers or wrappers for, or on rolls of, such roofing.

It is further ordered, That the respondent, within thirty (30) days from notice hereof, file with the Commission's report in writing stating in detail the manner in which this order has been complied with.

¹ Made as of June 16, 1924.

