

Complaint.

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FEDERAL TRADE COMMISSION

v.

WESTERN ELATERITE ROOFING 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 473—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; in accordance with the practice of some manufacturers and jobbers, as known to many in the trade, but not to the general purchasing public, 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; with the capacity and tendency to mislead part of the trade and said 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:

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 Western Elaterite Roofing Co., 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, Western Elaterite Roofing Co., is and at all times hereinafter mentioned was a corporation, existing and doing business under and by virtue of the laws of the State of Colorado, having its principal office and place of business in the city of Denver, 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, Western Elaterite Roofing 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 statement of facts was agreed upon 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. The respondent, Western Elaterite Roofing Company, is, and at all times hereinafter mentioned was, a corporation existing and doing business under and by virtue of the laws of the State of Colorado, having its principal office and place of business in the city of Denver, in said State; and is now, and for more than three years last past has been 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, in direct competition with numerous other persons, copartnerships and corporations similarly engaged.

PAR. 2. For a period of more than three 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, describe, designate and refer to a certain type of such roofing material, hereinafter referred to as asphalt roofing, which has a smooth surface and is impregnated and covered with asphalt, and which was not and is not composed either in whole or in part of rubber, examples of such use of the word "Rubber" being the labeling and branding of such roofing as "Indian Rubber Roofing," "Buffalo Rubber Roofing," and "Reliable Rubber Roofing"; likewise it has been for the past several years the custom of several other manufacturers and jobbers of such asphalt roofing to designate and refer to this type of roofing as "Rubber" roofing, although it was not and is not composed either in whole or in part of rubber; and such fact or practice was and is well known to many of the jobbers and retailers of such roofing trade but was not and is not so known to the general purchasing public.

The use by respondent of the word "Rubber," as above described, is a false and misleading characterization, description and designation of its asphalt roofing and has the tendency and capacity to create a false impression and belief among part of the 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.

PAR. 3. Respondent, in the conduct of its aforesaid business, has put up and sold said asphalt roofing in rolls, such rolls containing 108 square feet each; and it has been and is a custom of the trade, among practically all manufacturers of asphalt roofing, to refer to the said amount, to wit: 108 square feet, as "a square" of roofing;

that said roofing varies in weight according to the thickness of the felt which forms the base of such roofing; that respondent and the great majority of other manufacturers of such roofing put up such roofing in at least three approximate weights, to wit, 35 pounds per square, 45 pounds per square and 55 pounds per square. Respondent, during the aforesaid period, in the conduct of its business, has sold and offered for sale, and is now selling and offering for sale, its said asphalt roofing of the aforesaid approximate weights of 35 pounds, 45 pounds, and 55 pounds per square under the designation and description of "1 ply," "2 ply," and "3 ply," respectively, although such roofing did not and does not consist of more than one separate ply, layer or thickness, but was and is, on the contrary, of one ply, layer or thickness; likewise, it has been a custom of many other manufacturers and jobbers of this type of roofing to refer to such roofing of the aforesaid approximate weights as "1 ply," "2 ply," and "3 ply," notwithstanding the fact that such roofing consists of but one ply, layer or thickness; and such fact or practice was and is well known to many of the jobbers and retailers of such roofing, but was not and is not so known to the general purchasing public.

The use by respondent of the words "2 ply" and "3 ply," as above described, is a false and misleading designation and description of its asphalt roofing and 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.

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 re-

¹ Made as of June 16, 1924.

Order.

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spondent, the statement of facts agreed upon between 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, Western Elaterite Roofing 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 "2 ply" or "3 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 a report in writing stating in detail the manner in which this order has been complied with.

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Complaint.