

Complaint.

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FEDERAL TRADE COMMISSION
v.
STOWELL MANUFACTURING 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 476—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 of its competitors, 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.

Mr. Daniel Loeb, Receiver, of Jersey City, N. J., for respondent.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that the Stowell Manufacturing 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, Stowell Manufacturing 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 New Jersey, having its principal office and

place of business in the city of Jersey City, 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, Stowell Manufacturing 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

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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 AS TO THE FACTS.

PARAGRAPH 1. Respondent is, and was at all times hereinafter mentioned, a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, having its principal office and place of business in the city of Jersey City, in said State, and now, and continuously since 1892 engaged in the manufacture of composition felt-base roofing material which is hereinafter referred to as asphalt roofing and in the sale and shipment thereof from respondent's place of manufacture to the purchasers thereof in the several States of the United States in direct competition with numerous persons, copartnerships and corporations similarly engaged. For upwards of twenty years asphalt roofing has been manufactured by many other manufacturers and there are now over fifty concerns manufacturing such asphalt roofing in the United States. Respondent has been, and is, in direct competition with all of these concerns in the sale of such roofing. Respondent's aggregate sales of asphalt roofing for a period of ten years prior to January 1, 1920, exceeded \$1,000,000; for a period of five years prior to January 1, 1920, exceeded \$900,000; for the period of one year prior to January 1, 1920, exceeded \$350,000; and for a period of one year prior to January 1, 1921, as estimated by respondent, exceeded \$500,000.

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, applies and affixes labels to, and issues samples of, asphalt roofing manufactured by it, such samples consisting of small pieces of the roofing itself, which are enclosed in printed paper of 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 asphalt roofing have within the past three years, because of its ambiguous and misleading character, ceased to use the term "rubber"; the respondent in said labels, circulars and other advertising matter and until about the month of January, 1920, in said sample covers, likewise used the word or term "rubber" to characterize and describe the asphalt roofing manufactured by it, notwithstanding the fact that such roofing was not and is not composed either in whole or in part of rubber, examples of such use by respondent of the word "rubber" being the branding and advertising of its said roofing as "Durite Rubber Roofing" and "Eureka Rubber 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 cus-

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tomarily 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 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 "1 ply," "2 ply" and "3 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 "1 ply," "2 ply," and "3 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 "1 ply," "2 ply" and "3 ply"; the respondent for the past several years in the labels, sample covers, circulars and other advertising matter hereinbefore referred to, likewise used the terms "1 ply," "2 ply" and "3 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 and thicknesses or felt superimposed one upon the other and made into one piece.

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; 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 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, Stowell Manufacturing 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 products: (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.

¹ Made as of June 16, 1924.

Memoranda.

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The Commission also made similar findings and orders, as of February 29, 1924, in the following cases:

INTERNATIONAL ROOFING MANUFACTURING Co. of Chicago, Ill., Docket 480, the aggregate sales of which company's asphalt roofing, according to the findings, exceeded \$400,000 a year for the two years preceding 1921. Examples of the use of the word rubber: "International Star Rubber Roofing" and "International Mica Rubber Roofing." Appearances: *Mr. John R. Dowlan* for the Commission; *Mr. Clark McKircher* of McKircher & Link of New York, N. Y., for respondent.

H. W. JOHNS-MANVILLE Co. of New York City, Docket 483, the aggregate sales of which company's asphalt roofing, according to the findings, for the six years prior to January 1, 1920, exceeded \$7,000,000, and for the year prior to January 1, 1920, exceeded \$2,000,000. Examples of the use of the word rubber: "Pilot Rubber Type Roofing," "Regal Roofing, The Best All-around Rubber Type Roofing" and the "better grade 'rubber' roofing." Appearances: *Mr. John R. Dowlan* for the Commission.

H. F. WATSON Co. of Erie, Pa., Docket 488, the aggregate sales of which company's asphalt roofing, according to the findings, have exceeded \$500,000 a year for the five years preceding April 1, 1921. Examples of the use of the word rubber: "Rubber Roofing" and "Reliable Rubber Roofing." Appearances: *Mr. John R. Dowlan* for the Commission; *Mr. Clark McKircher* of McKircher & Link of New York, N. Y., for respondent.

BECKMAN-DAWSON ROOFING CO.

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