

Complaint.

FEDERAL TRADE COMMISSION

v.

BECKMAN-DAWSON 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 477—February 29, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of composition felt-base roofing material containing no rubber and made in varying weights and thicknesses; in accordance with the practice of some manufacturers in so designating their smooth qualifying roofing to distinguish the same from other roofing not so designated, advertised, labeled and sold the same as "rubber" roofing, and, in accordance with the practice of manufacturers and dealers, as one-ply, two-ply, and three-ply, as the case might be; with the capacity and tendency to mislead part of the trading and the general purchasing public in reference to the composition and manufacture of such roofing, notwithstanding the absence of any intention so to do, 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.

Mr. Edwin P. Grosvenor, of Cadwalader, Wickersham & Taft of New York City, for respondent.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that the Beckman-Dawson 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 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," 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, Beckman-Dawson Company, is and at all times hereinafter mentioned, was a corporation organ-

Findings.

7 F. T. C.

ized, existing and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business in the city of Chicago, 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, Beckman-Dawson 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 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 AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation, organized under the laws of the State of Illinois, having its principal office and place of business in the city of Chicago, in said State, and now and for more than two years last past engaged in the manufacture and sale of a composition felt-base roofing material, which it sells and ships in commerce to purchasers in other States of the United States and the District of Columbia, in direct competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. The above-mentioned composition felt-base roofing material, which is hereinafter referred to as asphalt roofing, as commonly and customarily made by the several manufacturers thereof, including respondent, is composed of a base of felt made of rag waste and other materials, impregnated and coated with asphalt. Respondent, in connection with the marketing of its said product and to advertise and distribute the same, uses samples of the various kinds and brands of its said asphalt roofing, such samples being enclosed in a printed or cardboard cover, and respondent also uses printed circulars and other printed matter which it distributes to jobbers, retail dealers and others who might be interested in the purchase or use of said roofing, and in addition thereto respondent places upon its said product labels descriptive thereof. For many years prior to the filing of the complaint herein, it has been the custom and practice of several but not all of the manufacturers of asphalt roofing to designate and describe a certain grade or type of said asphalt roofing, to wit, a smooth type as "Rubber Roofing," to distinguish that smooth type of roofing from the other types of roofing not so finished but surfaced with slate or other mineral substances, notwithstanding the fact that there was and is no rubber used in the composition of the above-described roofing; in like manner, the respondent, prior to the filing of the complaint herein branded, labeled and described its said asphalt roofing as "rubber" roofing and in so doing displayed or caused to be displayed upon its said labels and in various circulars and other advertising matter the name or term "rubber" in connection with its said asphalt roofing.

Findings.*

7 F. T. C.

The use by respondent of the word "rubber," as above described, is a false and misleading characterization, designation and description of its asphalt roofing and, notwithstanding the absence of any intention on the part of the respondent to deceive, has the tendency and capacity to create a false impression and belief among the roofing trade and general public that respondent's said asphalt roofing and other roofing of the same type is composed wholly or partly of rubber, and to deceive and mislead the general purchasing public into the belief that in purchasing respondent's said asphalt roofing it is in fact purchasing a roofing composed wholly or partly of rubber.

PAR. 3. The above-described asphalt roofing as commonly made by the several manufacturers thereof, including respondent, consists of one single piece of felt impregnated and coated, as aforesaid, and not of two or more plies, layers or thicknesses, superimposed one upon the other and made into one piece, the terms "one, two, and three ply" being applied simply to the different thicknesses and weights of such roofing; respondent's said asphalt roofing has always consisted of one single piece of felt, impregnated and coated as hereinbefore set out, made in differing weights and thicknesses to which respondent applies the terms, "one, two and three ply"; likewise for a number of years last past and prior to the filing of the complaint herein it has been the practice of manufacturers of and dealers in asphalt roofing to designate and describe the different weights or thicknesses of such roofing by the use of the terms "one-ply," "two-ply," and "three-ply," notwithstanding the fact that such roofing consists of one-ply, layer or thickness only, and respondent followed that practice as hereinbefore set out and branded, labeled and described its said asphalt roofing as "one-ply," "two-ply," and "three-ply."

The use by the respondent of the words, "two-ply" and "three-ply," as above described, is a false and misleading designation and description of its asphalt roofing and, notwithstanding the absence of any intention on the part of respondent to deceive has the tendency and capacity to create a false impression and belief among the roofing trade and general public that respondent's said roofing and other roofing of the same type consists of two or more plies, layers or thicknesses, and to deceive and mislead the general purchasing public into the belief that in purchasing respondent's said roofing it is in fact purchasing a roofing that consists 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 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, Beckman-Dawson 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 terms "two-ply" or "three-ply," alone or in combination with any words or terms 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.

¹ Made as of June 16, 1924.

The Commission as of the same date also made similar findings and orders in the following cases:

AMALGAMATED ROOFING Co. of Chicago, Ill. Docket 481. Appearances: *Mr. John R. Dowlan* for the Commission; *Mr. Edwin P. Grosvenor* of Cadwalader, Wickersham & Taft, of New York City, for respondent.

THE CHATFIELD MANUFACTURING Co. of Chicago, Ill. Docket 482. Appearances: *Mr. John R. Dowlan* for the Commission; *Mr. Edwin P. Grosvenor* of Cadwalader, Wickersham & Taft, of New York City, for respondent.

KEYSTONE ROOFING MANUFACTURING Co. of York, Pa. Docket 484. Appearances: *Mr. John R. Dowlan* for the Commission; *Mr. Edwin P. Grosvenor* of Cadwalader, Wickersham & Taft, of New York City, for respondent.

THE PHILIP CAREY Co. of Lockland, Ohio.¹ Docket 487. Appearances: *Mr. John R. Dowlan* for the Commission; *Mr. Edwin P. Grosvenor* of Cadwalader, Wickersham & Taft, of New York City, for respondent.

THE PARAFFINE COMPANIES, INC. of San Francisco, Cal. Docket 489. Appearances: *Mr. John R. Dowlan* for the Commission; *Mr. Edwin P. Grosvenor* of Cadwalader, Wickersham & Taft, of New York City, for respondent.

• ¹ This company is not The Philip Carey Manufacturing Co.

DURABLE ROOFING MANUFACTURING CO.

345

Complaint.

FEDERAL TRADE COMMISSION