

Complaint.

FEDERAL TRADE COMMISSION

v.

DURABLE ROOFING 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 478—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 described, branded and labeled 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 Durable Roofing 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, Durable Roofing 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 Oregon, having its principal office and place

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of business in the city of Portland, 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, Durable Roofing 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 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. The respondent, Durable Roofing 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 Oregon, having its principal office and place of business in the city of Portland, 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, 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 other materials impregnated and coated with asphalt; and said asphalt roofing is customarily offered for sale and sold by respondent and other manufacturers thereof and dealers therein, in rolls which contain approximately 108 square feet each, such quantity being customarily called by the manufacturers thereof, and in the roofing trade generally, a "square"; respondent and the other manufacturers thereof customarily apply and affix to the rolls of such roofing a printed label designating and describing such roofing and containing the trade name or brand under which such roofing is intended to be, and is, sold to and purchased by the trade and the purchasing public and ultimate consumers. 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, sells a portion of its rolls of such roofing with labels thereon which contain its own trade names and brands, such sales being made to consumers who use the same and to dealers by whom the same is resold under said labels to consumers, and the remainder of its rolls of such roofing is sold by respondent with labels thereon which contain other and different trade names and brands which are selected or designated by the respective purchasers thereof, such sales being made to dealers by whom the same is resold under said labels to consumers and others; it was and is intended by respondent that said labels and the contents thereof and statements therein should in

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such manner reach the general purchasing public, for the purpose of increasing the sale of such asphalt roofing so manufactured and sold by respondent and for the purpose of inducing such public to choose and purchase such roofing in preference to roofing manufactured and sold by competitors of respondent; and said labels and the contents thereof and statements therein did and do in this manner reach the general purchasing public, and did and do induce a substantial portion thereof to choose and purchase the asphalt roofing manufactured by respondent, in preference to roofing manufactured and sold by competitors of respondent. 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"; likewise the respondent, for more than two years prior to the service upon it on December 17, 1919, of the complaint in this proceeding, upon said labels which were so selected or designated by the respective purchasers of its said asphalt roofing, displayed and used the name or term "rubber" in connection with other words, to describe and refer to, and as part of trade names and brands for, the roofing so sold, examples of such use of the word "rubber" being the describing, branding and labeling of such roofing as "Galvanized Rubber Roofing, Monogram Brand," and "Standard Rubber Roofing."

The use by respondents 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 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 "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 of 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 for more than two years prior to the service upon it, on December 17, 1919, of the complaint in this proceeding in the labels hereinbefore referred to and in other advertising matter 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.

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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, Durable Roofing 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 terms "two ply" or "three ply," alone or in combination with any other 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.

¹ Order modified as of June 16, 1924.

P. LORILLARD CO., INC., ET AL.

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