

Complaint.

8 F. T. C.

IN THE MATTER OF
AMERICAN SHELLAC COMPANY, INC.

COMPLAINT, FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1047—November 18, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture of shellacs, and of various grades of shellac compounds which contained from 60 per cent to 80 per cent of shellac gum, with the addition of 40 per cent to 20 per cent of resin or other gums, dissolved in alcohol, and in the sale of such products, sold said compounds labeled "White Shellac" or "Orange Shellac," in accordance with the color, in competition with concerns which sold their products labeled and branded in accordance with the spirit and purpose of a resolution adopted by the National Varnish Manufacturer's Association and other trade organizations, and designed to prevent the debasement of the term "Shellac" and to protect the purchasing public through providing for the use on labels and in advertising of products not composed exclusively of shellac gum dissolved in alcohol, of the word "compound" together with the word "shellac," where the latter content equaled or exceeded one-half the total solid content, and for the use of the word "substitute" or "imitation" together with the word "shellac" in other cases; with the effect of misleading and deceiving a substantial part of the purchasing public into believing such products to be composed solely of genuine shellac gum dissolved in alcohol, and of inducing the purchase thereof in such belief:

Held, That the sale of such compounds labeled as above set forth constituted an unfair method of competition.

Mr. William A. Sweet for the Commission.

Mr. Monroe J. Cahn, of New York City, for respondent.

COMPLAINT.

Acting in the public interest pursuant to the provisions 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," the Federal Trade Commission charges that the American Shellac Company, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under and by virtue of the laws of the State of New York, with its principal office located in the Produce Exchange Building, in the city of New York in said State, and its factory located at Long Island City

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in said State. It is, and at all times hereinafter mentioned has been, engaged in the business of manufacturing, selling, and distributing paints, varnishes and shellacs and substitutes for shellac to painters, jobbers, dealers, and the public generally throughout the United States. In the course and conduct of its business respondent causes its said products when sold to be transported from the State of New York through and into other States of the United States and the District of Columbia, to the purchasers thereof. In the course and conduct of its said business respondent is, and has been at all times herein mentioned, in competition with other persons, partnerships, and corporations similarly engaged in the manufacture and/or sale of similar products in interstate commerce and with the trade generally.

PAR. 2. Respondent in the course of its business as aforesaid, has caused for more than one year last past and still causes to be manufactured and sold to jobbers, dealers, and purchasing public throughout the United States by means of traveling salesmen, mail orders and otherwise, a varnish composed of from 60 to 80 per cent shellac gum and from 40 to 20 per cent of other gums, substitutes for shellac gum, cut in alcohol, labeled, branded, and advertised as "White Shellac," and "Orange Shellac," without indicating on such labels and in such advertisements that said varnish contains any gum other than shellac gum. The said labeling and advertising of said varnish by respondent as aforesaid, are false and misleading and have the capacity and tendency to mislead and deceive the said purchasers thereof, the trade, and the purchasing public into the belief that the varnish so labeled, branded and advertised is composed only of genuine shellac gum, cut in alcohol, and to induce said purchasers to purchase said varnish in that belief.

PAR. 3. There are a large number of manufacturers and distributors of varnish composed only of genuine shellac gum, cut in alcohol, who advertise, label, and sell the same under the name of "shellac," and also many manufacturers and distributors of shellac substitutes who do not advertise, brand or label said shellac substitutes as "shellac" or otherwise indicate to the purchasing public that such substitutes are manufactured or composed of shellac gum cut in alcohol.

PAR. 4. The above alleged acts and things done by respondent are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Findings.

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REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, American Shellac Company, Inc., 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, and having made, executed, and filed an agreed statement of facts in which it is stipulated and agreed by respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein, without the introduction of testimony or the presentation of argument in support of same, the Federal Trade Commission, being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, American Shellac Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office located in the Produce Exchange Building, in the City of New York, State of New York, and its factory located in Long Island City in said State. It is, and at all times mentioned hereinafter has been, engaged in the business of manufacturing, selling, and distributing paints, varnishes, shellacs, and substitutes for shellac, to painters, jobbers, dealers and the public generally throughout the United States. In the course and conduct of its business respondent causes its said products when sold to be transported from the State of New York through and into other States of the United States and the District of Columbia, to the purchasers thereof. In the course and conduct of its business respondent is and has been at all times mentioned herein, in competition with other persons, partnerships, and corporations also engaged in the manufacture and/or sale of similar products in interstate commerce and with the trade generally.

PAR. 2. In the regular course of its business respondent manufactures shellac and various grades of shellac compounds which are commonly used as substitutes for pure shellac or for other purposes for which pure shellac is not essential. These shellac products range from pure shellac, which is made from shellac gum dissolved in alcohol without adulteration by the addition of resin or other gums, to compositions or compounds containing 60 to 80 per cent

of shellac gum with the adulteration or addition of 40 to 20 per cent of resin or other gums, dissolved in alcohol. These shellacs and shellac compounds are placed in containers and branded or labeled as follows:

The product composed of 100 per cent shellac gum without adulteration or addition of other gums, dissolved in alcohol, is marked "Pure Orange Shellac" or "Pure White Shellac" respectively as the color of the shellac is properly indicated thereby. The

The product composed of less than 100 per cent pure shellac gum, which is adulterated by the addition of other gums than shellac, varying from 20 to 40 per cent of adulterations, dissolved in alcohol, is labeled "Orange Shellac" or "White Shellac" respectively as the color of the shellac is properly indicated thereby.

difference between the pure and the adulterated shellac is indicated solely by the addition of the word "Pure" to the otherwise uniform labeling. These products so manufactured, packed and branded or labeled are sold by the respondent throughout the United States.

PAR. 3. "Shellac" is a distinctive commodity produced by insects, the *Tachnardiæ Laccæ*, found in India and a small portion of Tibet. These insects in swarms feed upon the leaves or twigs of certain trees and there exude a substance which soon encloses the entire swarm. The twigs when detached from the trees with the incrustations are placed in bags or sacks and heated over a charcoal fire, the ends of the bags being twisted until a gum-like substance drips from the bag. This gum is collected on large flat stones or other flat surfaces and there hardens into cakes. These cakes are later broken up into small particles and are exported from India to the United States and various other countries. The industry is quite an extensive one, and there was imported into the United States in—

	Pounds.
1910 -----	24,500,000
1911 -----	16,333,000
1912 -----	20,750,000
1919 -----	23,750,000
1920 -----	29,500,000
1921 -----	28,200,000

The "Shellac" imported into the United States all originates in India and is used in the United States by manufacturers of furniture, electrical appliances, cables, whips, and hats, and is in the paint trade used for making a varnish, which varnish when made from shellac gum cut in alcohol is superior to any other varnish and is known to the trade as "Shellac" or "Shellac Varnish."

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The essential and peculiar characteristics of "Shellac Varnish" are the rapidity with which it dries, its penetrating qualities into the grain of the wood, and the facts that after it dries, on being subjected to heat it becomes pliable and assumes the shape of the commodity on which it is used and when cooled again becomes rigid in a new shape. No shellac gum is produced in America.

PAR. 4. "Shellac" as used and understood commercially, with reference to the gum or raw material, in the trade and among manufacturers, distributors and painters, means the shellac gum imported from India, and the term "Shellac" or "Shellac Varnish" is understood and does mean to manufacturers, distributors and painters and a large portion of the public users thereof, the Indian gum cut in alcohol.

PAR. 5. In the making of varnishes, substitutes for shellac gum are used, such as resin, acroides, and copal.

It is a practice among certain manufacturers and dealers who prepare such varnishes with the substitutes above referred to to label the product put upon the market either "Imitation Shellac" or "Shellac Substitute" or designate such product under some fanciful name such as "Amlac," "Krystolac," "Zinlac," or other trade name. These substitutes for "Shellac Varnish" are inferior in quality and value to "Shellac" but where no deception in branding is practiced serve a useful purpose.

PAR. 6. On or about November 13, 1922, the National Varnish Manufacturers' Association, a trade organization composed of about 100 members and embracing in its membership nearly one-half of the total number of manufacturers of varnish in the United States, producing over three-fourths of the total production of varnish in the United States, adopted the following standard system of nomenclature for shellacs in accordance with the following resolution passed by said association on said date:

Whereas, The term "shellac" has been applied not only to products composed of shellac gum dissolved in alcohol but also to compounds of shellac and other materials,

And whereas these practices, if continued, will result in the debasement of the term shellac, confusion in the trade, and deception of purchasers,

Now, therefore, be it resolved, That the term "shellac" on labels or in advertising means only shellac gum cut or dissolved in alcohol; that if such shellac be reduced, reinforced, or modified, the term shellac shall likewise be modified by the addition of the word "compound" in conspicuous letters. That if the shellac content be less than 50 per cent of the solid content by weight of

the material, the word shellac shall not be used on labels or advertising, except as a part of the formula, if printed, except in connection with the word substitute or imitation.

Be it further resolved, That this information shall be plainly shown on all containers, bills, contracts and letters of quotations. It is recommended that products containing less than 50 per cent by weight of shellac be sold under arbitrary trade names or brands.

On or about November 14, 1922, the above resolution was adopted by the Paint Manufacturers' Association of the United States, a trade organization composed of 140 paint manufacturers, and embracing in its membership about one-half of the total number of manufacturers of paint in the United States, producing about three-fourths of the total production of paint in the United States. The United States Shellac Manufacturers' Association of Chicago and the National Paint, Oil & Varnish Association of New York adopted similar resolutions.

That in response to the spirit and purpose of this resolution a very large proportion of the manufacturers of shellac are labeling or branding their shellac, shellac compounds and shellac substitutes accordingly and are selling their products so labeled and branded throughout the United States, in competition with the products of the respondent labeled and branded as set out in paragraph 2 hereof.

PAR. 7. That the word "Pure" as applied to shellac indicates that the product so marked is free from adulteration, modification or reduction of an entire content of shellac gum dissolved in alcohol; that the word "Shellac" (standing alone or with a color adjective) has the same meaning; that the word "compound" indicates adulteration, modification or reduction to only such extent that the word "shellac" used in conjunction therewith denotes that shellac gum is the principal and predominant element of the compound and that the word "substitute" as a qualification for the word "shellac" indicates an adulteration, modification or reduction in the amount of shellac gum present to such an extent that shellac gum is not the principal and predominant element of the compound.

PAR. 8. That the use by respondent of the labels "White Shellac" or "Orange Shellac," respectively, as the color of the shellac is properly indicated thereby, upon the containers of the varnishes composed of shellac gum mixed with a large quantity of shellac-gum substitutes manufactured, sold and shipped by respondent as set forth in the foregoing findings, has the capacity and tendency to and does mislead and deceive a substantial part of the purchasing

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public into the belief that such products, so labeled, are composed solely of genuine shellac gum dissolved in alcohol, and to induce said purchasers to purchase same in that belief.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto by the respondent, and an agreed statement of facts in which it is stipulated and agreed by respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts without the introduction of testimony or the presentation of argument in support of same, and the Commission having made its report, in which it stated its findings as to the facts and reached the conclusion that the respondent has violated 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,"

Now, therefore, it is ordered, That the respondent, its officers, directors, agents and employees, shall cease and desist from—

1. Using the words "Pure Shellac" or "Shellac" alone or in connection with any other word or words, unless the product designated is pure shellac gum dissolved or cut in alcohol.
2. Using the word "Shellac" alone or in connection with any other word or words to designate a product which is not pure shellac but in which shellac gum is the principal and predominant element unless accompanied by the word "compound" in equally conspicuous letters.
3. Using the word "Shellac" alone or in connection with any other word or words to designate a product which is not pure shellac and in which shellac gum is not the principal and predominant element, unless accompanied by the word "substitute" in equally conspicuous letters.

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And it is further ordered, That the respondent shall, within 60 days from the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order herein set forth.

By the Commission, Commissioners Thompson and Nugent dissenting for reasons given in dissent to modified order in Don-o-Lac case.¹

¹ Decided November 4, 1924. (Docket 924.) See 8 F. T. C. 235 at p. 242 et seq.

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IN THE MATTER OF

RELiance VARNISH COMPANY, B. G. ROBERTSON, AND
B. J. ROBERTSON, INDIVIDUALLY AND AS PRESIDENT
AND VICE PRESIDENT RESPECTIVELY OF SAID RE-
LIANCE VARNISH COMPANY.

COMPLAINT, FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1208—November 28, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of varnish, acting through its president and vice president, gave and offered to give to superintendents, foremen and other employees of furniture and automobile manufacturers, without the knowledge or consent of their employers, substantial sums of money as an inducement for them to make their purchases of varnish and allied products for and on behalf of their employers, from it, and to recommend such purchases to their employers, and as rewards for having induced the same:

Held, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition.

Mr. Henry A. Cox for the Commission.

Mr. J. Matt Chilton, Mr. J. S. Laurent and Mr. Ben F. Washer,
of Louisville, Ky., for respondent.

COMPLAINT.

Acting in the public interest pursuant to the provisions 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," the Federal Trade Commission charges that the Reliance Varnish Company and B. G. Robertson and B. J. Robertson, individually and as president and vice president, respectively, of said Reliance Varnish Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Reliance Varnish Company, hereinafter referred to as corporation respondent, is a corporation organized under the laws of the State of Kentucky with its principal office and place of business in the city of Louisville, in said State. It is engaged in the manufacture of varnish and allied products and