

Complaint.

IN THE MATTER OF
HENRY BOSCH COMPANY.

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

Docket 884—February 3, 1925.

SYLLABUS.

Where a corporation engaged in the sale and distribution of a ready-mixed paint, the vehicle of which contained 35 per cent volatile matter and the pigment of which consisted of less than 50 per cent of white lead and zinc oxide, with the balance composed of lithopone, calcium carbonate and siliceous matter; made such statements in describing the same in its catalogues, pamphlets, and other trade literature as " * * * impossible to produce anything better * * *", guaranteed to "wear longer and permanently look better than any other paint including pure white lead and oil", " * * * more durable, gives better finish and is far more economical than any other paint" contains "the best quality of white lead, zinc, and linseed oil", and guaranteed to "cover more surface, work better, wear longer, and permanently look better than other paint including pure white lead and oil", and used the last stated quoted matter also as a part of the label thereof; with the effect of misleading and deceiving the trade and general public into believing the pigment content of such paint to be composed principally of white lead and zinc oxide, and said paint to be the best and highest quality, grade and standard of paint for exterior use:

Held, That such false and misleading advertising, and such mislabeling, under the circumstances set forth, constituted unfair methods of competition.

Mr. George E. Wallace for the Commission.

Mr. Victor Eltinge of Chicago, Ill., 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 Henry Bosch Company, 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 the laws of the State of Illinois with its principal place of business in the city of Chicago in said State. It was at all times hereinafter mentioned and still is engaged in the business of selling paints and painters' supplies to painters and painting contractors throughout the United States. Its method of doing business is as follows: It sends catalogues, pamphlets and other literature describing, and

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setting out the prices fixed by it for, the paints in which it deals, to customers and prospective customers throughout the United States. Upon receiving orders for paints through said means, respondent causes the paints so ordered to be shipped from its said place of business in the city of Chicago to said purchasers at points in various States of the United States. In the course and conduct of its said business, respondent is in competition with other individuals, partnerships and corporations similarly engaged in selling paints in interstate commerce, and with the trade generally.

PAR. 2. For more than one year last past respondent has caused and still causes to be inserted in its aforesaid catalogues, pamphlets and other literature, false and misleading assertions concerning the nature, quality and ingredients of its aforesaid paints among which are assertions to the effect that, as to the paints comprised in one of respondent's brands named "Henry Bosch Co.'s prepared Paint," every ounce of lead, zinc, oil, Japan employed in the making of said paint is of the highest grade and it is impossible to produce any better paint. The truth and fact is that over one-third the solid contents of said paints consists of adulterants and fillers substituted for and inferior to white lead and zinc oxide and that the volatile ingredient of the vehicle of said paints consists of mineral spirits.

PAR. 3. The aforesaid false and misleading assertions have the capacity and tendency to mislead and deceive the said purchasers into the belief that the paints comprised in aforesaid "Henry Bosch Co.'s Prepared Paint" brand, are composed chiefly of the highest grades of white lead, zinc, oxide, linseed oil, turpentine, and Japan drier, and to purchase said paints in that belief.

PAR. 4. The above alleged acts and things done by respondent are all to the prejudice of the public and 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.

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, Henry Bosch Company, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance 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 conclusion 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 or in opposition thereto, 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. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in the city of Chicago, in said State. It is and for more than five years last past has been engaged in the business of selling and distributing ready-mixed paints and painters' supplies to painters, painting contractors and retail dealers located at points in various States of the United States. Respondent delivered said products when sold by causing them to be transported from its place of business in the city of Chicago, Ill., to purchasers at points in various States of the United States. In the course and conduct of its business, respondent was and still is in competition with other individuals, partnerships and corporations likewise engaged in the sale and distribution of ready-mixed paints and painters' supplies among the various States of the United States.

PAR. 2. The ready-mixed paints dealt in by the respondent are put up in commercial containers of assorted sizes on which are printed the respective brand names of the paints contained therein. In connection with the sale of said ready-mixed paints, the respondent sends catalogues, pamphlets, circulars, color cards and price lists to its customers and prospective customers, advertising, describing and quoting prices for said ready-mixed paints.

PAR. 3. Among the paints dealt in by respondent is a ready-mixed paint named by respondent "Henry Bosch Company's Prepared Paint." For more than one year last past the respondent has sold said paint and offered the same for sale to its trade under the said brand name, during all of which time said paint has been manufactured in accordance with the same formula. Respondent, in the course and conduct of its business as aforesaid, made various representations in said catalogues, pamphlets, circulars, color cards and price lists as to the goods and quality of said "Henry Bosch Company's Prepared Paint." In the issues of its catalogue for September, 1921, and June, 1922, appear the following statements:

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HENRY BOSCH CO.'S PREPARED PAINT.

This brand has held the place of honor in our line for many years, it being impossible to produce anything better. Every ounce of Lead, Zinc, Oil, Japan employed in the making of this paint is of the highest grade, as determined by critical analysis, so also are the pigments and other ingredients.

We guarantee that this paint, when properly used, will not crack, flake or chalk off and will cover more surface, work better, wear longer and permanently look better than any other paint, including pure white lead and oil.

In the color cards distributed by said respondent appear the following statements with reference to Henry Bosch Co.'s Prepared Paint:

BEST PAINT MADE

THE HENRY BOSCH CO.'S PREPARED PAINT READY FOR USE.

An honest paint made on quality only. More durable, gives better finish and is far more economical than any other paint, ready-mixed or mixed by hand.

HOW IT IS MADE.

The Henry Bosch Company's paint contains the best quality of white lead, zinc and linseed oil. The colors used for tinting are clean, permanent and clear, no component part going into the paint until it is proven right by an exhaustive test. These and the other raw materials are combined by experts in proper proportions and thoroughly ground and mixed by heavy machinery of the most approved pattern, the result being that the oil and pigments are perfectly incorporated, giving the paint a most durable, wear-resisting film.

We ask you to make a close comparative test of these paints with any other on the market, believing that the outcome will convince you that we are giving you from five to fifteen per cent more value for your money than any of our competitors. Our position in both the jobbing and the manufacturing field, enables us to give you better value for your money than you can secure elsewhere.

COLOR CARD.

Henry Bosch Co.'s Paint.

We guarantee that this paint when properly used will not crack, flake, or chalk off, and will cover more surface, work better, wear longer, and permanently look better than other paint, including pure White Lead and Oil.

HENRY BOSCH Co.

The labels on the cans in which said paint is packed bear the guarantee above quoted as appearing in the color cards and catalogue.

PAR. 4. The said "Henry Bosch Company's Prepared Paint" sold and distributed by respondent is not the best paint that can be made. The vehicle of said paint contains 35 per cent volatile matter, which is excessive, and the paint hides poorly. Less than one-half of the

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pigment content of said paint consists of white lead and zinc oxide, the remainder being lithopone, calcium carbonate and siliceous matter, which, when used in such large quantities as in said paint, are inferior to white lead and zinc oxide and have the effect of reducing, and do in fact reduce, the quality and value of the paint.

PAR. 5. There are many companies which manufacture and/or sell and distribute ready-mixed paints to the trade and purchasing public, which companies truthfully represent the qualities and ingredients of the paints they sell.

PAR. 6. The said representations made by the respondent, as set forth in paragraph 3 hereof, are deceptive and misleading, and have and had the capacity and tendency to, and do, mislead and deceive the trade and the general public into believing, (1) that the pigment content of said paint is composed principally of white lead and zinc oxide, and (2) that the said paint is the best and highest quality, grade and standard of paint for exterior use.

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, and the statement of facts agreed upon by the respondent and counsel for the Commission, filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated 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,"

It is now ordered, That the respondent, Henry Bosch Company, its officers, agents, representatives, servants and employees cease and desist from:

(1) Falsely representing that the pigment content of paint is composed principally of white lead and zinc oxide.

(2) Representing paint which contains not more than 50 per cent white lead and zinc oxide pigment as the best paint for outside use or the best quality, grade and standard of paint for such use.

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(3) Representing paint which contains as much as 35 per cent volatile matter as the best paint for outside use or the best quality, grade and standard of paint for such use.

It is further ordered, That the respondent Henry Bosch Company shall, within sixty days after 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 to cease and desist hereinbefore set forth.

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IN THE MATTER OF

JOHN P. OLSEN, E. W. MALANG AND H. H. HENTSCHELL,
COPARTNERS, TRADING UNDER THE STYLE AND
FIRM NAME OF OZARK CREAMERY COMPANY.

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

Docket 1221—February 3, 1925.

SYLLABUS.

Where butter manufacturers in order to meet the public demand for small quantities had long advertised, offered and sold butter in standard, recognized unit quantities of one-fourth pound, one-half pound and one pound, of definite shape and size, in unmarked wrappers, and so packed or assembled in cartons as to make up a full pound; and thereafter a competitor, in disregard of collective action theretofore taken by members of the industry denouncing the practice and providing for its discontinuance, packed, sold and offered for sale butter in units which imitated the aforesaid standard and customary units of weight, but contained less, and were packed in cartons equal in size and similar in dress and design to the aforesaid cartons, thereby advisedly enabling and encouraging its retailer customers to sell such underweight units in their unmarked wrappers as and for units of one-fourth pound, one-half pound and one pound respectively; with the result that the purchasing public was deceived in reference to the quantity of butter purchased by it in the aforesaid units and cartons:

Held, That such misrepresentations of quantity, under the circumstances set forth, constituted an unfair method of competition.

Mr. M. Markham Flannery for the Commission.

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 John P. Olsen, E. W. Malang and H. H. Hentschell, copartners, trading under the style and firm name of Ozark Creamery 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. Respondents with their principal office and place of business in the town of Neosho in the State of Missouri are en-