

Complaint.

S F. T. C.

IN THE MATTER OF
SAMSON ROSENBLATT.

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

Docket 1142—February 13, 1925.

SYLLABUS.

Where an individual engaged in the sale of a large quantity of baking powder originally sold by the manufacturer thereof to the Army and shipped to France, and which was in a deteriorated and damaged condition, advertised the same, with full knowledge of the aforesaid facts, at a price much lower than the regular market price thereof, together with the statement "material guaranteed to be in perfect condition," with the effect of deceiving the trade and consumers in reference to the quality thereof:

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

Mr. Richard P. Whiteley 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 Samson Rosenblatt, hereinafter referred to as respondent, has been and is 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 is an individual with his principal place of business in the City and State of New York. He is engaged in the sale of drugs and chemicals to wholesale dealers located at points in various States of the United States. He causes said commodities when so sold to be transported from his said place of business in the City and State of New York, and in some instances from other points in the United States where he has stocks of said merchandise, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of his said business respondent is in competition with other individuals, partnerships and corporations similarly and otherwise engaged in the sale of drugs and chemicals in interstate commerce.

PAR. 2. Among said competitors of respondent is the Jacques Manufacturing Company, a corporation with its principal office and place of business in the city of Chicago, State of Illinois. It is, and for many years last past has been, engaged in the manufacture of a

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baking powder named, branded and labeled by it, and hereinafter referred to as, "K. C. Baking Powder," and the sale of said commodity to wholesale and retail dealers throughout the United States. During said time said baking powder has been of a uniform quality and effectiveness when used in the preparation of foodstuffs, which said characteristics have long since become and are now known and familiar to the trade and public.

PAR. 3. After the entry of the United States into, and during its participation in the World War, said Jaques Manufacturing Company sold to the United States Government large quantities of "K. C. Baking Powder," which was shipped by said Government to France for the use of the United States Army in that country. A large quantity of said baking powder was not used, but was transported about and stored in various places in France, and after the close of the World War was sold in France by the United States Government as Army surplus property. Thereafter, and in the year 1923, respondent purchased in France large quantities of said baking powder and imported said baking powder into the United States for the purpose of selling same to wholesale dealers in the ordinary course of his aforesaid business. By reason of the lapse of time and the conditions of handling, storage and transportation through which said baking powder had passed, the same when placed upon the market in the United States by respondent as above set out, had become greatly deteriorated in quality and effectiveness for use in preparing foodstuffs.

PAR. 4. After importing said baking powder into the United States as set out in paragraph 3 hereof, respondent, by means of letters, circulars, leaflets and other trade literature, offered said baking powder for sale to wholesale dealers in the United States, and through aforesaid means sold large quantities thereof to such dealers in various States of the United States. In said letters and other trade literature respondent caused said baking powder to be depicted and described as K. C. Baking Powder without in any manner disclosing that said baking powder was deteriorated as hereinbefore set out.

PAR. 5. Respondent's aforesaid letters and other trade literature had the capacity and tendency to, and did, mislead and deceive wholesale dealers receiving same into the belief said goods was K. C. Baking Powder of the quality habitually characterizing said product, hereinbefore referred to, and to cause said wholesalers to, and they did, purchase large quantities of said baking powder in that belief. Thereafter said wholesale dealer vendees resold said baking powder to retail dealers in various parts of the United States and said retail dealers resold same to the public, all in the

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ordinary and usual course of trade, said baking powder being purchased by all of aforesaid dealers and the consuming public as and for K. C. Baking Powder of said usual and well-known standard of quality and efficiency.

PAR. 6. Said baking powder sold by respondent and distributed throughout the trade and to ultimate consumers in the manner and under the circumstances all hereinbefore set out, was put up in containers each bearing the name, label and trade-mark of said Jaques Manufacturing Company, all as habitually used by said company in packing and distributing said K. C. Baking Powder, by reason whereof when said baking powder came into the hands of aforesaid dealers and eventually into the hands of the consuming public, the above alleged acts and things done by respondent had the capacity and tendency to and did mislead and deceive the trade and public into the belief that said Jaques Manufacturing Company was offering for sale in and through the ordinary course of trade K. C. Baking Powder that was of poor quality and greatly below the standard of quality and effectiveness which had for many years characterized said product as hereinbefore set out. Wherefore, the acts and things done by respondent hereinbefore set out, had the capacity and tendency to, and did, prejudice and injure the business and good will of the Jaques Manufacturing Company amongst the trade and public throughout the United States.

PAR. 7. The respondent still continues in the above alleged acts and practices in the manner, under the circumstances, and with the results all hereinbefore set out.

PAR. 8. The above alleged acts and things done by respondent are all to the prejudice of the public and said competitor, the Jaques Manufacturing Company, 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, Samson Rosenblatt, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent, having entered his appearance and filed his answer herein, hearings were had and evidence and testimony was thereupon introduced in support of the allegations of the complaint

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before Edward M. Averill, an examiner of the Federal Trade Commission theretofore duly appointed. No appearance was made for respondent.

And thereupon, this proceeding came on for final hearing, and counsel for the Commission having submitted brief, 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, Samson Rosenblatt, is an individual, with his principal place of business in the City and State of New York. Since about October, 1923, respondent Samson Rosenblatt engaged exclusively in the real estate business in and around the City of New York. During the year of 1923, prior to October, respondent was engaged in a jobbing business in which he bought drugs and chemicals and disposed of the same to wholesale dealers located at various points in the several States of the United States. Respondent, in the course and conduct of his business was engaged in competition in interstate commerce with other individuals, partnerships, and corporations.

PAR. 2. The Jaques Manufacturing Company, a corporation, with its principal office and place of business in the city of Chicago, State of Illinois, is now and for thirty-four years last past has been engaged in the manufacture of a baking powder named, branded, and labeled, "K C Baking Powder," and in the course and conduct of its business sells to jobbers and wholesale dealers throughout the United States said "K C Baking Powder," which said commodity it ships or causes to be shipped from its factory in the city of Chicago, State of Illinois, to its customers located in the several States of the United States. After the entry of the United States into the World War, the said Jaques Manufacturing Company sold to the United States Government large quantities of its said "K C Baking Powder" which was shipped by the Government to France for the use of the United States forces in that country. A large quantity of said baking powder was not consumed in France, but after the close of the war was sold or otherwise disposed of in France by the United States Government.

PAR. 3. Late in 1922, or during the early months of 1923, the respondent purchased in New York from one O. S. de Caussee from five to six thousand cases of "K C Baking Powder," which said baking powder had been purchased originally by the Quartermaster Department of the United States Army, shipped to France during

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the year 1918 and, after the close of hostilities, had been sold or otherwise disposed of in France by the United States Government.

On January 8, 1923, the respondent offered The Jaques Manufacturing Company 4,000 cases of this "K C Baking Powder" at 5 cents per pound f. o. b. New York. On January 12, 1923, the respondent was advised by letter from The Jaques Manufacturing Company that the goods in question had been shipped overseas four or five years before and were probably in very poor condition. On June 21, 1923, in response to a request from The Jaques Manufacturing Company, the respondent shipped to the said Jaques Manufacturing Company a case of the "K C Baking Powder" which the respondent was offering for sale, and on June 27, 1923, The Jaques Manufacturing Company in writing, advised the respondent that the baking powder in question had been examined and analyzed, and that it was found to be in both a deteriorated and damaged condition, and that the said powder had lost over 25 per cent of its carbon dioxide strength; the letter reading as follows:

We are in receipt of a case containing 25 cans of baking powder. On examination we find that it is both in a deteriorated and damaged condition, having lost 25% of its CO₂. You are running chances of prosecution by the Government in shipping baking powder in this condition in interstate commerce. If you will have an examination made of the can which was taken out of the case shipped us, you will verify the above. Because of the condition of the baking powder, we would not care to purchase same.

The respondent also offered the baking powder above referred to, to the Cleveland Baking Powder Works, 135 William Street, New York City. In the early part of 1923, certainly as early as May 14 of that year, the respondent caused to be printed and circulated by mail to various wholesale grocers in Virginia, Texas, Arkansas, Kansas, Idaho, Illinois, Michigan, Tennessee, Kentucky, Wisconsin, California, and the several States of the United States a hand-bill in which he offered for sale "K C Baking Powder" in one pound cans at a price per can of 4½ cents net, f. o. b. New York, and on said hand-bill stated, "Material Guaranteed to be in Perfect Condition."

The market price of "K C Baking Powder" to wholesalers at that time was thirteen cents per pound.

PAR. 4. In response to the offer made by respondent in the circular above described, the respondent sold to wholesalers in various parts of the United States, the "K C Baking Powder" which had been shipped abroad for the use of the military forces of the United

States, which he had purchased as stated above, and caused said baking powder to be shipped to his customers in the several States of the United States. The respondent did not rebox the cases, but shipped them out in the same cases in which the goods came from the Government; the boxes bearing marks clearly indicating that the goods had been in the possession at some period of the United States Army, for example, "June 18th United States Quartermaster Corps." The baking powder was sold by the respondent to wholesalers in various States of the United States, and by such wholesalers sold to retail dealers, and by the retail dealers to the consumers and there is evidence that in some instances the baking powder, upon being used by the consumer, was found to have deteriorated and to be unsuitable for use as a leavening agent, and to have been returned by the said customer to the dealer.

PAR. 5. Baking powder is subject to deterioration after being packed a considerable length of time, and under ordinary circumstances it does not maintain its proper leavening strength after it has been packed for five years. Under the conditions to which this baking powder was subjected by virtue of its being shipped overseas, and because of the varying climatic conditions the deterioration would be more rapid than under normal conditions of storage. The analysis of the baking powder purchased by the Jaques Manufacturing Company from respondent showed that it had become deteriorated; that it did not contain the carbon dioxide strength required under the Pure Food and Drugs Act of the United States.

PAR. 6. On or about June, 1923, under a contract previously entered into with the Navy Department of the United States, the respondent delivered to the Navy Supply Depots at Mare Island, Calif., Puget Sound, Wash., 6,300 pounds of the "K C Baking Powder" heretofore described. This baking powder was in 1-pound cans packed in wooden containers, which containers bore marks indicating that the shipment had at some time been stock sold to the Quartermaster Corps of the United States Army, the physical condition of the stock was very poor; some cans rusted and sifted. An analysis of the contents was made by the Navy officers, and it was ascertained that the carbon dioxide strength of the baking powder was below the 12 per cent limit required by the Navy specifications, the samples tested showing 10.30, 10.81, and 11.41 per cent carbon dioxide strength. The shipments were thereupon refused by the Navy. At no time was the Navy Department advised by the respondent that the baking powder to be furnished was old stock from surplus Army supplies.

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PAR. 7. The statement made in the advertising circular by the respondent, "material guaranteed to be in perfect condition" contained a false representation, and was a willful and deliberate attempt to mislead or deceive purchasers or prospective purchasers. The conduct of the respondent in advertising and offering for sale an article intended for and used solely in the preparation of food without fully disclosing to the purchasers thereof the fact that said article had been manufactured and packed for five years, shipped abroad, and reshipped to this country, deceiving the wholesale dealers receiving the advertising circular of the respondent into the belief that the baking powder was of standard strength and was fit for the use for which it was purchased; and such nondisclosure was unfair not only to the manufacturer of the "K C Baking Powder," but to the wholesaler, the retailer, and the consumer.

CONCLUSION.

The practices of the said respondent, Samson Rosenblatt, 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 of the respondent and the testimony and documentary evidence offered and received, and the brief of counsel for the Commission, and the Commission having made its findings and 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,"

Therefore, it is now ordered, That the respondent, Samson Rosenblatt, do cease and desist from directly or indirectly—

1. Advertising or offering for sale under a representation of perfect condition, baking powder which had been manufactured and furnished to the United States Government for use in the World War.

2. Selling or offering for sale under a representation of perfect condition, baking powder which had materially deteriorated.

It is further ordered, That the respondent, Samson Rosenblatt, shall within sixty days after the service upon him of a copy of this order file with the Commission a report setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF

NASHUA MANUFACTURING COMPANY, AND WALTER BAYLISS, ROBERT AMORY, AND CHARLES L. CREHORE, COPARTNERS, DOING BUSINESS UNDER THE NAME AND STYLE OF AMORY, BROWNE & COMPANY.

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

Docket 1076—February 18, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of cotton blankets and other cotton goods, and its selling agents, sold blankets composed wholly of cotton labeled "Woolnap" or "Wool finish," with the effect of misleading a substantial portion of the purchasing public in respect of the composition thereof and of thereby diverting trade from truthfully labeled goods:

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

Mr. Morgan J. Doyle for the Commission.

Mr. Guy Cunningham of Herrick, Smith, Donald & Farley of Boston, Mass., 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 Nashua Manufacturing Company and Walter Bayliss, Robert Amory and Charles L. Crehore, copartners, doing business under the name and style of Amory, Browne & 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. The respondent, Nashua Manufacturing Company, is a corporation organized under the laws of the State of New Hampshire, having its factories located at Nashua, in said State, and with executive offices in the city of Boston, State of Massachusetts. It is now and at all times hereinafter mentioned has been engaged in the manufacture amongst other things of pure cotton