

Complaint.

IN THE MATTER OF
WATERPROOF PAINT & 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 1096—March 5, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of paints, varnishes, and allied products neither procured from the Government nor manufactured for its use, nor in accordance with its specifications or requirements, featured the word "Government" in the legends on its labels, together with a picture of the Capitol, with the result that the purchasing public was misled in respect of the source, manufacture, and quality of such products:

Held, That sale of products labeled as above 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 the Waterproof Paint & Varnish Company, 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 a corporation organized under the laws of the State of Massachusetts with its principal office and place of business in the city of Watertown, in said State. It is engaged in the manufacture of paints, varnishes and allied products and the sale thereof to wholesale and retail dealers located at points in various States of the United States. It causes said products when so sold to be transported from its aforesaid place of business in the city of Watertown, Mass., into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of its aforesaid business respondent is in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale of paints, varnishes and allied products in interstate commerce and with the trade generally.

PAR. 2. For more than a year last past respondent, in the course of its aforesaid business, has sold certain paint manufactured by it

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under the name "Government Waterproof Paint" and has labeled the containers in which said paint is packed, shipped and sold with labels bearing said name "Government Waterproof Paint," together with a depiction of the Capitol of the United States; and further respondent has sold certain varnish manufactured by it under the name of "Government Waterproof Varnish" and upon the containers in which said varnish is shipped, packed and sold respondent has placed labels bearing said name "Government Waterproof Varnish" together with a depiction of the Capitol of the United States.

PAR. 3. Respondent is in no way connected with the United States Government and aforesaid products are not made for or according to any formula or specification of said Government whatsoever.

PAR. 4. Aforesaid labeling and branding by respondent, as set out in paragraph 2 hereof, has the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that said paint and varnish is of a high grade manufactured for or used by the United States Government; prepared according to specifications or requirements of said Government and of a quality required by such specifications and requirements, and to induce the trade and public to purchase said paint and varnish in that belief.

PAR. 5. 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, on the 10th day of December, 1923, issued and served its complaint upon the respondent, Waterproof Paint & Varnish 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 arguments in support of same or in opposition thereto, and 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. The respondent, Waterproof Paint & Varnish Company, is a corporation organized under the laws of the State of Massachusetts, with its principal office and place of business in the city of Watertown, in said State. It is engaged in the manufacture of paint, varnish, and allied products and the sale thereof to wholesale and retail dealers located at points in various States of the United States. It causes said products when so sold to be transported from its aforesaid place of business in the city of Watertown, Mass., into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of its aforesaid business, respondent is in competition with other individuals, partnerships and corporations who are also engaged in the manufacture and sale of paint, varnish, and allied products, and who ship such products from their places of business to purchasers located in States of the United States other than those in which said respective places of business are located.

PAR. 2. Respondent has been and now is placing on containers of the paint, varnish, and allied products manufactured and sold by it, as shown by Exhibits 1 and 2,¹ attached to and made a part of the stipulation of facts herein, labels which read in part as follows:

Government Waterproof Paint,
Manufactured by Waterproof
Paint & Varnish Co., Watertown,
Mass.

the word "Government" is prominently displayed in red color, in type much larger than the other letters used thereon. Beneath the word "Government" appears a picture or print of the United States Capitol Building at Washington, D. C., underneath which appears in blue color the words "Waterproof Paint."

PAR. 3. Respondent, in the sale and shipment of its products as hereinbefore described, has sold and shipped paint, varnish and allied products in containers which it labeled and branded "Government Waterproof Paint." Dealers purchasing this paint, varnish or allied products offer it to the general purchasing public as thus labeled and branded. The paint, varnish and allied products, the containers for which are so labeled and branded, were not procured from the Government of the United States, nor manufactured for its use, nor made in accordance with any United States Government

¹ Not published.

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formulas, specifications or requirements. The aforesaid labels and brands, used upon the containers for said paint, varnish and allied products, indicate that said paint, varnish and allied products were procured from the Government of the United States, or manufactured for its use, or made in accordance with some United States Government formulas, specifications or requirements, and thereby the general purchasing public is led to believe that the said paint, varnish and allied products, labeled and branded as aforesaid, are paint, varnish and allied products obtained from the Government of the United States, or manufactured for its use, or made in accordance with some United States Government formulas, specifications or requirements, which the general purchasing public believes to be paint, varnish and allied products of an unusually high grade or character because approved by the United States Government.

PAR. 4. Prior to the issuance of the complaint herein there were and now are manufacturers selling their products in commerce among the several States of the United States who make paint, varnish and allied products similar to those made and sold by the respondent, but the containers for which are not labeled or branded with any word or words to indicate that the Government of the United States has had any connection with said paint, varnish or allied products. Prior to the issuance of the complaint herein there were and now are manufacturers selling their products in commerce among the several States of the United States who accurately and truthfully describe and label such products.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, the statement of facts agreed upon by counsel for the Commission and counsel for respondent, and the Commission having made its findings as to the facts and its conclusion that 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,"

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Order.

It is now ordered, that the respondent, Waterproof Paint & Varnish Company, its officers, agents, representatives, servants and employees, cease and desist from directly or indirectly employing or using the label or brand "Government," or any similar descriptive label or brand, on paint, varnish or allied products or upon the containers thereof, except either (1) when the paint, varnish or allied products has been obtained from the United States Government, or (2) when the paint, varnish or allied product has been manufactured for, and accepted by, the United States Government, or (3) when the paint, varnish or allied product has been made in accordance with some United States Government formula, specification or requirement, and the word or term indicating the United States Government is joined or used with some other words or terms indicating compliance with some United States Government formula, specification or requirement (e. g., made in accordance with Government W. D. Specification No. 97), or (4) when the paint, varnish or allied product has been obtained from some Government other than the United States Government, and the word or term used to indicate Government is joined or used with some other word or term indicating the Government from which the paint, varnish or allied product was obtained (e. g., French Government Waterproof Paint), or (5) when the paint, varnish or allied product has been manufactured for, and accepted by, some Government other than the United States Government and the word or term used to indicate Government is joined or used with some other words or terms indicating the Government for which the paint, varnish or allied product was manufactured and by which it was accepted (e. g., Canadian Government Waterproof Paint), or (6) when the paint, varnish or allied product has been manufactured in accordance with the formula, specification or requirement of some Government other than the United States Government, and the word or term used to indicate Government is joined or used with some other words or terms indicating compliance with the formula, specification or requirement of the Government in accordance with whose formula, specification or requirement the paint, varnish or allied product has been manufactured (e. g., made in accordance with specification of the Italian Government).

It is now further ordered, That respondent, Waterproof Paint & Varnish 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.

Complaint.

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IN THE MATTER OF
**BARTH & GUTTMAN, INC., TRADING AS THE NEW
ENGLAND MANUFACTURING COMPANY.**

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

Docket 1220—March 5, 1925.

SYLLABUS.

Where a corporation engaged in the sale of bed spreads, tablecloths, and other linen and cotton products to wholesale and retail dealers, and neither owning, controlling nor operating any factory,

- (a) Adopted and used a trade name which included the words "manufacturing company";
- (b) Displayed the same upon its stationery together with the picture of a mill, along with its own corporate name and the words, "Sole Owners";
- (c) Caused bills of lading and express receipts for goods purchased by it from the manufacturers for shipment directly to its vendees to be made out as coming from the pretended manufacturing company, the name of which it used as a trade name, as above set forth, and the goods to be so labeled and all mill marks to be erased therefrom; and
- (d) Simulated the stationery of a manufacturing competitor;

With the capacity and tendency to mislead and deceive customers and prospective customers, and the public into believing it to be the manufacturer of the goods sold by it, and with the effect of inducing the purchase thereof:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. T. John Butler for the Commission.

Leight & Neckritz 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 Barth & Guttman, Inc., a corporation, trading as the New England Manufacturing Company, 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, issues this its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Barth & Guttman, Inc., trading as The New England Manufacturing Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal or executive offices and ware-