

Complaint.

IN THE MATTER OF
SANDOW TOOL COMPANY.

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

Docket 1240—March 5, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of steel rulers and other tools had long stamped the same with the initials of its corporate name "B. & S." as a trade-mark and brand, and had established a widespread and favorable reputation as a manufacturer of such products, and said mark and brand by reason of the long-continued use thereof and by means of advertising had come to identify its products to the public as having been made by it; and thereafter a competitor marked and branded its rulers with the same letters, in the identical style and manner, with the effect of misleading and deceiving the purchasing public and of inducing them to buy its aforesaid products as and for those of said corporation:

Held, That such appropriation of the trade-mark of a competitor, under the circumstances set forth, constituted an unfair method of competition.

Mr. L. B. Perkins for the Commission.

Mr. John Boyle, Jr., of Washington, D. C., 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 Sandow Tool Company, a corporation, more particularly hereinafter described, and 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 complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Sandow Tool 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 located in the city of New York, in said State, and with its manufacturing plant located in the city of Rochelle Park, in the State of New Jersey. Respondent is now, and for more than two years last past has been engaged in the manufacture and sale in interstate commerce of brass electrical light fixtures, and various and numerous small machinist's tools, including calipers, dividers, gauges, nail sets, center punchers, tempered steel rulers, universal

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bevels, and screw machine products, causing said products when so sold to be transported from its manufacturing plant in the State of New Jersey to purchasers located in other States of the United States. In the course and conduct of its said business respondent continuously has been and is now in competition with other individuals, firms, partnerships and corporations also manufacturing and selling similar products in interstate commerce, and particularly with individuals, firms, partnerships, and corporations manufacturing and selling steel rulers throughout the several States of the United States.

PAR. 2. Among the competitors of respondent is the Brown & Sharpe Manufacturing Company, a corporation organized under the laws of the State of Rhode Island, with its principal or executive office and manufacturing plant located in the city of Providence, in said State. For more than twenty years said competitor has continuously manufactured, advertised and sold in wholesale and retail quantities throughout the several States of the United States various and numerous mechanics' and machinists' tools of sundry kinds and descriptions, and particularly under the brand of legend "B & S," the same being the initials of its corporate name, which said brand or legend it adopted as a trade name, and has caused and still causes the same to be stamped upon various tools manufactured by it, including the various types of steel rulers which it manufactures and sells throughout the various States of the United States. In the course and conduct of its said business the said Brown & Sharpe Manufacturing Company has built up a large and lucrative business and valuable good will for the aforementioned products, and the letters or legend "B & S" which it adopted as a trade name and which it causes to be stamped upon its various products has become so identified and associated in the minds of the trade and purchasing public as to identify products containing said brand or legend as being the product of the said Brown & Sharpe Manufacturing Company.

PAR. 3. Respondent, for more than one year last past, in the course and conduct of its business, as a means of inducing the purchase of its product, has caused certain steel rulers manufactured by it, and without the consent or approval of the Brown & Sharpe Manufacturing Company, to be stamped with the brand or legend "B & S," which said steel rulers it has marketed and sold throughout the several States of the United States in competition with the steel rulers manufactured by the said Brown & Sharpe Manufacturing Company.

PAR. 4. The use by respondent of the said label or legend "B & S" as hereinbefore set out, has the capacity and tendency to mis-

lead and deceive the trade and purchasing public into the belief that the steel rulers manufactured and sold by it were in fact manufactured by the said Brown & Sharpe Manufacturing Company, and tends to and does cause said purchasers to purchase said products in that belief, and thereby unfairly diverts business from and otherwise prejudices and injures the said Brown & Sharpe Manufacturing Company.

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 issued and served a complaint against the respondent, Sandow Tool Company, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent entered its appearance on the 10th day of November, 1924, and made answer in writing to said complaint and 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 the same, 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. That the respondent, Sandow Tool Company, is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its executive offices in the city of New York, in said State. Its manufacturing plant is located in the city of Rochelle Park, in the State of New Jersey. At the time of the issuance of the complaint herein, and for more than two years prior thereto, it had been, and it now is, engaged in the manufacture and sale in interstate commerce of brass electrical lighting fixtures and various and numerous machinists' small tools, including calipers, dividers, gauges, nail sets, center punches, tempered steel rulers, universal bevels and screw machine products. It sells its

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said products to persons, firms and corporations located in various States of the United States and causes said products when so sold to be transported from its aforesaid factory to, into and through other States of the United States to said purchasers at their respective points of location. Respondent in the course of its said business is in direct and active competition with other individuals, partnerships and corporations likewise engaged in the manufacture and/or sale and distribution in interstate commerce of electrical lighting fixtures, machinists' small tools and allied products.

PAR. 2. Among the aforesaid competitors of respondent is the Brown & Sharpe Manufacturing Company, a corporation existing and doing business under and by virtue of the laws of the State of Rhode Island and having its principal office and factory located in the city of Providence, Rhode Island. It has for more than 20 years been continuously engaged in the manufacture and sale throughout the United States of various mechanics' and machinists' tools, particularly in the manufacture and sale of machinists' small tools, such as are manufactured and sold by the respondent herein and described hereinabove. The said Brown & Sharpe Manufacturing Company in the conduct of its aforesaid business has for more than 20 years last past stamped and branded each of the products and tools so manufactured by it with the initials of its corporate name, to wit: "B & S"; it has used and still uses the said corporate initials "B and S" as a trade-mark and brand upon its products and has caused and still causes said trade-mark and brand "B & S" to be stamped upon tools manufactured by it, including the various types of steel rulers manufactured by it and sold and distributed throughout the United States as aforesaid. The said Brown & Sharpe Manufacturing Company has established a widespread and favorable reputation throughout the United States as a manufacturer of products of good quality and other desirable characteristics and the products manufactured by said Brown & Sharpe Manufacturing Company enjoy a widespread popularity and demand throughout the United States. By reason of the long-continued use of the letters "B & S" by said Brown & Sharpe Manufacturing Company upon its products and by reason of the advertising of said Brown & Sharpe Manufacturing Company, the said letters "B & S" when applied to or used in connection with rulers, machinists' small tools or other products of the character manufactured and sold by said company, have come to indicate generally in the minds of the purchasing public the products of said Brown & Sharpe Manufacturing Company; the said letters "B & S" have become generally fixed in the minds of the purchasing public as

being the trade name or symbol to be found upon products manufactured by said Brown & Sharpe Manufacturing Company, and said letters "B & S" being associated in the minds of the trade and purchasing public with the products of said Brown & Sharpe Manufacturing Company are generally used by said purchasing public as a means of identifying and distinguishing its products from those manufactured by competitors.

PAR. 3. Both the respondent and the Brown & Sharpe Manufacturing Company sell their said products principally to wholesale dealers or jobbers and retail dealers, to be resold by said wholesale dealers, or jobbers, to retail dealers, and to be resold by said retail dealers to the consuming public.

PAR. 4. Respondent, for more than one year last past, and in the course of its aforesaid business, has manufactured and sold throughout the United States, certain steel rulers manufactured, stamped, and sold as aforesaid by the Brown & Sharpe Manufacturing Company. Respondent, in the course of the manufacture of its said steel rulers, and after having sold the said rulers, and at the request of some of its wholesale and/or retail dealer customers, whose firm or trade name did not warrant the use of said letters, has stamped or imprinted upon some of them the letters "B & S" in a manner and style identical with the aforesaid trade name or symbol as used by said Brown & Sharpe Manufacturing Company, and having so stamped its said rulers, respondent has shipped them from its said manufacturing plant in New Jersey to, into and through other States of the United States, to purchasers at their respective points of location. Respondent, in adopting and using the trade symbol or letters "B & S" upon the steel rulers, as aforesaid, did so without the consent of the said Brown & Sharpe Manufacturing Company having ever been obtained.

PAR. 5. Purchasers seeking to buy from customers of respondent rulers manufactured by the Brown & Sharpe Manufacturing Company, as aforesaid, have been sold rulers marked as aforesaid, and manufactured by respondent and upon which respondent had stamped and imprinted the letters or legend "B & S" as aforesaid, said mark leading said purchasers to believe that they were purchasing the products of said Brown & Sharpe Manufacturing Company.

PAR. 6. The use by respondent of the said mark or brand as set out above, has the capacity and tendency to, and does, mislead and deceive some of the purchasing public to purchase the products of respondent in the belief that the products so purchased were manufactured by the Brown & Sharpe Manufacturing Company aforesaid.

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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 of the respondent and agreed statement of facts, filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent had 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, Sandow Tool Company, its officers, agents, representatives, servants and employees, cease and desist from—

(1) Imprinting or stamping the trade-mark or brand "B & S" upon the products manufactured and sold by it; and

(2) Using, employing or applying said trade-mark or brand in any manner in connection with the sale of its said products.

It is further ordered, That the respondent Sandow Tool Company shall within sixty days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Syllabus.

IN THE MATTER OF
NATIONAL REMEDY COMPANY, CHARLES S. JONES,
SADIE E. JONES, R. C. SNELL.

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

Docket 1206—March 11, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of stock and poultry medicines, and its representatives, and officers; in pursuance of a plan for disposing of its products, which included the solicitation of suburban and small town retail dealers and the use of long, blank "CONSIGNMENT CONTRACTS," printed partly in fine type, whereby the "agent" (dealer) agreed among other things to send the company a list of 100 of his best customers, and their addresses, to reach it within ten days from date of agreement, and a monthly itemized statement of goods unsold, with a remittance for goods sold, to reach it between the 25th and the last day of the month, failure to perform in any respect to give the company the right to charge him full invoice price for goods in hand, less a stated commission, which charge he bound himself to pay in cash, together with "costs, attorney fees and expenses of collection * * *";

- (a) Falsely represented the nature, effect and terms of the foregoing instrument;
- (b) Obtained signatures thereto by such misrepresentations and by falsely representing that (1) its products would be placed in the signer's store for display, (2) he was not to purchase the same but would be allowed a stated commission as compensation for the sale thereof; (3) its agents would call periodically upon him to collect for, check up and replenish goods, (4) would furnish blank forms for the list and inventories, and (5) its contract was merely an order;
- (c) Prevented signers from reading such contract by trickery by (1) urging the signer to haste in signing, (2) soliciting his signature upon customers' arrival or when he was otherwise distracted, (3) holding the contract so as to make it difficult or impossible for him to see it all clearly; and (4) failing to furnish him with a copy thereof; and
- (d) Solicited and obtained payment from signers by falsely representing that (1) it had refused to accept products returned, and storage charges were accumulating, (2) it had placed a claim in the hands of a collection agency, and (3) by writing them in the guise of a fictitious collection agency demanding payment;

With the result that it disposed of and collected for, a large proportion of its products, to the prejudice of competitors who did not make false and fraudulent statements or use coercive methods or trickery:

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