

Complaint.

9 F. T. C.

IN THE MATTER OF
GLIDDEN COMPANY AND FOREST CITY 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 1122—April 10, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of paints and allied products and neither connected with the Government or Navy, sold paint not made for the Government or Navy or in accordance with their specifications, named and labeled "U. S. Marine Paint," with the capacity and tendency to mislead and deceive the trade and public in respect of the manufacture or quality of such paint and thereby to induce the purchase thereof, to the prejudice of competitors who did not misrepresent their product:

Held, That the 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 Glidden Company and Forest City Paint & 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 Glidden Company is a corporation organized under the laws of the State of Ohio with its principal office and place of business in the city of Cleveland, in said State. Respondent Forest City Paint & Varnish Company is a corporation organized under the laws of the State of Ohio with its principal office and place of business in the city of Cleveland, in said State. Respondent Forest City Paint & Varnish Company is a subsidiary of respondent Glidden Company, that is to say: Respondent Glidden Company, or the individuals beneficiary interested therein as stockholders or otherwise, own the capital stock of respondent Forest City Paint & Varnish Company, and the officers

of respondent Glidden Company are likewise the officers of respondent Forest City Paint & Varnish Company. Both respondents are engaged in the manufacture of paints and allied products and the sale thereof to various individuals, partnerships, and corporations located at points in various States of the United States. Both respondents cause said products when so sold to be transported from their said principal places of business in the city of Cleveland, Ohio, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of their aforesaid business respondents are in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale of paints and allied products, in interstate commerce.

PAR. 2. In the course of their aforesaid business under the unified control exercised by the respondent Glidden Company, as above set out, respondents for more than a year last past have sold certain paint manufactured by them, or by one of them, under the name "U. S. Marine Paint" and have labeled the containers in which said paint is packed, shipped and sold with labels bearing said name "U. S. Marine Paint," and respondents have furnished to dealers said paint manufactured by them, or by one of them, in containers so labeled, which said paint thus packed and labeled has been thereafter sold to the consuming public by said purchasing dealers.

PAR. 3. Neither respondent is in any way connected with the United States Government or United States Navy, and said products are not made for or according to any formula or specification of the United States Government or United States Navy.

PAR. 4. The aforesaid labeling of said paint by respondents has the capacity and tendency to mislead and deceive the trade and public into the belief that said paint is of a high grade manufactured for or used by the United States Government or United States Navy; that said paint is prepared according to specifications or requirements of said Government or of said Navy, or that said paint is of the quality required by such specifications and requirements, and to induce the trade and public to purchase said paint in that belief.

PAR. 5. The above alleged acts and things done by respondents are all to the prejudice of the public and respondents' 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 its complaint upon the respondents, Glidden Company and Forest City Paint & Varnish Company, charging them 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 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, 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. Respondent, Glidden Company, is a corporation organized under the laws of the State of Ohio, with its principal office and place of business in the city of Cleveland in the State of Ohio. Forest City Paint & Varnish Company is a corporation organized under the laws of the State of Ohio, with its principal office and place of business in the city of Cleveland in said State. Both respondents are engaged in the manufacture of paints and allied products, and the sale thereof to various individuals, partnerships and corporations located at points in various States of the United States. Both respondents caused said products, when so sold, to be transported from their said principal place of business in the city of Cleveland, Ohio, into and through other States of the United States, to said purchasers at their respective points of location. In the course and conduct of their aforesaid business, respondents are in competition with other individuals, partnerships and corporations who are also engaged in the manufacture and sale of paints 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. In the course of its aforesaid business, respondent Forest City Paint & Varnish Company, as above set out, for more than a

year has sold certain paint manufactured by it under the name "U. S. Marine Paint" and has labeled the containers in which said paint is packed, shipped and sold, with labels bearing said name "U. S. Marine Paint," and it has furnished to dealers said paint manufactured by it in containers so labeled. The said paint thus packed and labeled has been thereafter sold to the consuming public by said purchasing dealers.

PAR. 3. Neither respondent is in any way connected with the United States Government or United States Navy, and said products are not made for or according to any formula or specifications of the United States Government or the United States Navy.

PAR. 4. The said products which respondent, the Forest City Paint & Varnish Company, so sold and labeled "U. S. Marine Paint" were inferior in quality, grade and standard, to the grade, quality and standard of Government specifications for such paint used by the United States Government or the United States Navy.

PAR. 5. The acts done by respondent, Forest City Paint & Varnish Company, and charged in the complaint herein, were prejudicial to the public and to competitors which did not and do not use similar labels in describing or advertising their paint.

PAR. 6. The aforesaid labeling of said paint by respondent, Forest City Paint & Varnish Company, has the capacity and tendency to mislead and deceive the trade and public into the belief that said paint is of a high grade, manufactured for or used by the United States Government or the United States Navy; that said paint is prepared according to specifications or requirements of said Government; or that said paint is of a quality required by such specifications and requirements, and to induce the trade and public to purchase said paint in that belief.

PAR. 7. Respondent Forest City Paint & Varnish Company has not used labels bearing the words "United States Marine Paint" since July 18, 1922, and no paint so labeled has since been shipped by it.

PAR. 8. Respondent, Glidden Company, did not use the labels complained of and described in the complaint herein.

CONCLUSION.

The practices of said respondent, Forest City Paint & Varnish Company, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal

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Trade Commission, to define its powers and duties, and for other purposes."

The charge of the complaint against the Glidden Company is not sustained.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents and the statement of facts agreed upon by counsel for the Commission and respondents, the Commission having made its findings as to the facts and its conclusion that respondent, Forest City Paint & Varnish Company, 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."

It is now ordered, That respondent, Forest City Paint & Varnish Company, its officers, agents, representatives, servants and employees, cease and desist from using the words "U. S. Marine" or words of similar import on labels, in advertising matter, or otherwise, to describe or designate paint which is not manufactured by or for the United States Government.

It is further ordered, That the respondent, Forest City 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 herein set out.

It is further ordered, That the complaint herein be dismissed as to respondent, Glidden Company.

Syllabus.

IN THE MATTER OF
CREAM OF WHEAT COMPANY.

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

Docket 890—April 11, 1925.

SYLLABUS.

- Where a corporation engaged in the packing of an extensively advertised and widely sold package cereal or breakfast food composed of purified middlings, and in the sale thereof on a uniform delivered price basis, to wholesalers and large retailers, and, from time to time, under a guarantee against decline in price, but which did not sell to mail-order houses, "collective purchasers," or purchasers buying for resale to other customers of the same class, and which occupied an important position in the market concerned; in pursuance of a policy directed to the observance of the minimum prices fixed by it for the sale of its said product at wholesale and at retail and by it based upon margins of average costs for individual stores which extend credit to customers, and maintain delivery, telephone, and similar services, and which it made known to its customers, and prospective customers, together with a request for their observance thereof, and an announcement of its purpose to refuse to supply those declining so to do, or those who themselves supplied price-cutting dealers;
- (a) Sought and secured agreements or understandings with customers and prospective customers binding them to maintain such prices, and to cooperate with it in securing the observance thereof by others;
 - (b) Solicited and secured information and reports from customers and from dealers and trade associations as to whether such customers were maintaining and disposed to maintain generally resale prices fixed by producers, and its own prices in particular;
 - (c) Solicited and secured reports from customers, of other customers who failed to observe its resale prices, and investigated and verified the same through further reports from customers, with a view to refusing further sales to those who had cut its resale prices;
 - (d) Notified other customers of its refusal to sell further to price cutters and required them not to sell the same on pain of themselves being refused further sales;
 - (e) Employed its sales agents to assist in such plan by reporting dealers who had failed to observe its resale prices, and to secure adherence thereto from customers or prospective customers, and furnished them with the names of price cutters to whom it had refused further sales and instructed them not to sell to the same; and
 - (f) Required an extra price for its products from price cutters in order to secure from them assurance of their future observance of its resale prices as a condition of reinstatement on the regular basis;