

Complaint.

IN THE MATTER OF

RALPH E. DINGS AND LIONEL SCHUSTER, A PARTNERSHIP DOING BUSINESS UNDER THE NAME AND STYLE OF DINGS & SCHUSTER.

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

Docket 1014—April 23, 1925.

SYLLABUS.

Where a firm engaged in the manufacture and sale of paints, varnishes, shellac, and substitutes for shellac, including shellac compounds composed of from 60 per cent to 80 per cent of shellac gum, with the adulteration or addition of 40 per cent to 20 per cent of resin or other gums dissolved in alcohol, sold said compounds labeled "White Shellac" and so advertised the same, in competition with concerns which sold their products labeled and branded in accordance with the spirit and purpose of a resolution adopted by the National Varnish Manufacturers' Association and other organizations, and designed to prevent the debasement of the term "shellac" and to protect the purchasing public through providing for the use on labels and in advertising of products not composed exclusively of shellac gum dissolved in alcohol, of the word "compound" together with the word "shellac," where the latter content equaled or exceeded one-half the total solid content, and for the use of the word "substitute" or "imitation" together with the word "shellac" in other cases; with the effect of misleading and deceiving a substantial part of the purchasing public into believing such compounds to be composed solely of genuine shellac gum dissolved in alcohol, and of inducing the purchase thereof in that belief:

Held, That the sale of such compounds labeled and advertised as above set forth, constituted an unfair method of competition.

Mr. William A. Sweet 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 Ralph E. Dings and Lionel Schuster, a partnership doing business under the name and style of Dings & Schuster, hereinafter referred to as respondents, have been and are using unfair methods of competition

Complaint.

9 F. T. C.

in commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Ralph E. Dings and Lionel Schuster are partners trading under the name and style of Dings & Schuster, with their plant and business office at Long Island City in the State of New York. They are, and at all times hereinafter mentioned were engaged in the business of manufacturing, selling, and distributing paints, varnishes, shellac and substitutes for shellac to painters, jobbers, dealers and the public generally throughout the eastern portion of the United States. In the course and conduct of their business said respondents cause their said products when sold to be transported from the State of New York to, into and through other States of the United States and the District of Columbia to the purchasers thereof, and at all the times hereinafter mentioned are and have been in competition with other persons, partnerships and corporations engaged in a similar business in interstate commerce.

PAR. 2. That shellac or shellac varnish, as commercially known and sold to jobbers, dealers, and the purchasing public, is composed solely of genuine shellac gum dissolved in alcohol, and is understood by said jobbers, dealers, and the purchasing public, to be composed of genuine shellac gum dissolved in alcohol.

PAR. 3. The respondents in the course and conduct of their said business for more than one year last past have manufactured and sold to jobbers, dealers, and the purchasing public, in commerce, as aforesaid, throughout the States in the eastern portion of the United States by means of traveling salesmen, mail orders, or otherwise, a product composed solely of shellac gum dissolved in alcohol, and have labeled, branded, and advertised, and still do label, brand and advertise the said product as "White Shellac"; that the said respondents also manufacture and sell in commerce, as aforesaid, and have manufactured and sold for more than one year last past a product composed of shellac gum and a large quantity of shellac gum substitutes such as rosin and similar ingredients, which product and the containers thereof they label, brand and advertise as "White Shellac" without indicating in any way whatever on such labels, brands and advertisements that such last described product contains any other gum or ingredient, substitute for gum, than genuine shellac gum. The said labels, brands and advertisements of said last described product are false and misleading and have the capacity and tendency to mislead and deceive the purchasers thereof, the trade and purchasing public, into the belief that said product so labeled, branded and advertised by respondents is composed solely

of genuine shellac gum dissolved in alcohol and to induce said purchasers to purchase same in that belief.

PAR. 4. There are a large number of manufacturers and distributors of varnish composed only of genuine shellac gum, cut in alcohol, who advertise, label, and sell the same under the name of "shellac" and also many manufacturers and distributors of shellac substitutes who do not advertise, brand, or label said shellac substitutes as "shellac" or otherwise indicate to the purchasing public that such substitutes are manufactured or composed of shellac gum cut in alcohol.

PAR. 5. The above acts and things done by respondents are all to the prejudice of the public and of 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, MODIFIED FINDINGS AS TO THE FACTS, AND ORDER.¹

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Ralph E. Dings and Lionel Schuster, a partnership doing business under the name and style of Dings & Schuster, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondents having entered their appearances and filed their answers herein and having made, executed and filed an agreed statement of facts on June 27, 1923, and the Commission having made and entered a report containing its findings as to the facts and conclusion and having issued and served on the respondents an order to cease and desist made thereon dated August 16, 1923, and thereafter it appearing to the Commission upon reconsideration of the matter that said findings as to the facts and said order should be modified in certain respects and the said respondents having made, executed and filed a modified agreed statement of facts in which it is stipulated and agreed by respondent that the Federal Trade Commission shall take such modified agreed statement of facts as the facts in this case and in lieu of testimony and proceed forthwith upon such modified agreed statement of facts to make its findings as to the facts and such order as it may deem

¹Original findings and order reported in 6 F. T. C. 340.

Findings.

9 F. T. C.

proper to enter therein without the introduction of testimony; the Federal Trade Commission being now fully advised in the premises makes this its modified findings as to the facts and conclusion:

MODIFIED FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That Ralph E. Dings and Lionel Schuster are partners trading under the name and style of Dings & Schuster, with their plant and business office at Long Island City in the State of New York. They are, and at all times hereinafter mentioned were engaged in the business of manufacturing, selling and distributing paints, varnishes, shellac and substitutes for shellac to painters, jobbers, dealers and the public generally throughout the eastern portion of the United States. In the course and conduct of their business said respondents cause their said products when sold to be transported from the State of New York to, into and through other States of the United States and the District of Columbia to the purchasers thereof, and at all the times hereinafter mentioned are and have been in competition with other persons, partnerships and corporations also engaged in the manufacture and/or sale of similar products in interstate commerce and with the trade generally.

PAR. 2. In the regular course of business respondents manufacture shellac and various grades of shellac compounds which are commonly used as substitutes for pure shellac or for other purposes for which pure shellac is not essential. These shellac products range from pure shellac which is made from shellac gum dissolved in alcohol without adulteration by the addition of resin or other gums to compositions or compounds containing 60 to 80 per cent of shellac gum with the adulteration or addition of 40 to 20 per cent of resin or other gums, dissolved in alcohol. These shellacs and shellac compounds are placed in containers and branded or labeled as follows:

The product composed of 100 per cent shellac gum without adulteration or addition of other gums, dissolved in alcohol, is marked "White Shellac."

The product composed of less than 100 per cent pure shellac gum, which is adulterated by the addition of other gums than shellac, varying from 20 to 40 per cent of adulteration, dissolved in alcohol, is labeled and advertised also as "White Shellac" without indicating in any way whatever on such labels and advertisements that such last described product contains any other gum or ingredient, substitute for gum, than genuine shellac gum. These products so manu-

factured, packed and branded or labeled are sold by the respondent throughout the United States.

PAR. 3. "Shellac" is a distinctive commodity produced by insects, the *Tachardia Laccae*, is found in India and a small portion of Tibet. These insects in swarms feed upon the leaves or twigs of certain trees and there exude a substance which soon incloses the entire swarm. The twigs when detached from the trees with the incrustations are placed in bags or sacks and heated over a charcoal fire, the ends of the bags being twisted until a gum-like substance drips from the bag. This gum is collected on large flat stones or other flat surfaces and there hardens into cakes. These cakes are later broken up into small particles and are exported from India to the United States and various other countries. The industry is quite an extensive one, and there was imported into the United States, in—

	Pounds.
1910 -----	24, 500, 000
1911 -----	16, 333, 000
1912 -----	20, 750, 000
1919 -----	23, 750, 000
1920 -----	29, 500, 000
1921 -----	28, 200, 000

The "Shellac" imported into the United States all originates in India and is used in the United States by manufacturers of furniture, electrical appliances, cables, whips and hats, and is in the paint trade used for making a varnish, which varnish when made from shellac gum cut in alcohol is superior to any other varnish and is known to the trade as "Shellac" or "Shellac Varnish."

The essential and peculiar characteristics of "Shellac Varnish" are the rapidity with which it dries, its penetrating qualities into the grain of the wood, and the facts that after it dries, on being subjected to heat it becomes pliable and assumes the shape of the commodity on which it is used and when cooled again becomes rigid in a new shape. No shellac gum is produced in America.

PAR. 4. "Shellac" as used and understood commercially, with reference to the gum or raw material, in the trade and among manufacturers, distributors and painters, means the shellac gum imported from India, and the term "Shellac" or "Shellac Varnish" is understood and does mean to manufacturers, distributors and painters and a large portion of the public users thereof, the Indian gum cut in alcohol.

PAR. 5. In the making of varnishes, substitutes for shellac gum are used, such as resin, acroides, and copal.

Findings.

9 F. T. C.

It is a practice among certain manufacturers and dealers who prepare such varnishes with the substitutes above referred to, to label the product put upon the market either "Imitation Shellac" or "Shellac Substitute" or designate such product under some fanciful name such as "Krystolac," "Zinlac" or other trade name. These substitutes for "Shellac Varnish" are inferior in quality and value to "Shellac" but where no deception in branding is practiced serve a useful purpose.

PAR. 6. On or about November 13, 1922, the National Varnish Manufacturers' Association, a trade organization composed of about 100 members and embracing in its membership nearly one-half of the total number of manufacturers of varnish in the United States, producing over three-fourths of the total production of varnish in the United States, adopted the following standard system of nomenclature for shellacs in accordance with the following resolution passed by said association on said date:

Whereas the term "Shellac" has been applied not only to products composed of shellac gum dissolved in alcohol but also to compounds of shellac and other materials.

And whereas these practices, if continued, will result in the debasement of the term "Shellac," confusion in the trade and deception of purchasers,

Now, therefore, be it resolved that the term "Shellac" on labels or in advertising means only shellac gum cut or dissolved in alcohol; that if such shellac be reduced, reinforced or modified, the term "Shellac" shall likewise be modified by the addition of the word "Compound" in conspicuous letters. That if the shellac content be less than 50 per cent of the solid content by weight of the material, the word "Shellac" shall not be used on labels or advertising, except as a part of the formula, if printed, except in connection with the words "Substitute" or "Imitation."

Be it further resolved that this information shall be plainly shown on all containers, bills, contracts and letters of quotations. It is recommended that products containing less than 50 per cent by weight of shellac be sold under arbitrary trade names or brands.

On or about November 14, 1922, the above resolution was adopted by the Paint Manufacturers' Association of the United States, a trade organization composed of 140 paint manufacturers, and embracing in its membership about one-half of the total number of manufacturers of paint in the United States, producing about three-fourths of the total production of paint in the United States. The United States Shellac Manufacturers' Association of Chicago and the National Paint, Oil & Varnish Association of New York adopted similar resolutions.

That in response to the spirit and purpose of this resolution a very proportion of the manufacturers of shellac are labeling or g their shellac, shellac compounds and shellac substitutes

98

Order.

accordingly and are selling their products so labeled and branded throughout the United States, in competition with the products of the respondent labeled and branded as set out in paragraph 2 hereof.

PAR. 7. That the word "Pure" as applied to shellac indicates that the product so marked is free from adulteration, modification or reduction of an entire content of shellac gum dissolved in alcohol; that the word "Shellac" (standing alone or with a color adjective) has the same meaning; that the word "compound" indicates adulteration, modification or reduction to only such extent that the word "Shellac" used in conjunction therewith denotes that shellac gum is the principal and predominant element of the compound and that the word "Substitute" as a qualification for the word "Shellac" indicates an adulteration, modification or reduction in the amount of shellac gum present to such an extent that shellac gum is not the principal and predominant element of the compound.

PAR. 8. That the use by respondents of the label "White Shellac" upon the containers of the varnishes composed of shellac gum mixed with a large quantity of shellac gum substitutes manufactured, sold and shipped by respondents as set forth in the foregoing findings, has the capacity and tendency to and does mislead and deceive a substantial part of the purchasing public into the belief that such products so labeled are composed solely of genuine shellac gum dissolved in alcohol and to induce said purchasers to purchase same in that belief.

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."

Commissioners Nugent and Thompson dissenting, based on their views as expressed in the Don-O-Lac case.

MODIFIED ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto by the respondents, and an agreed statement of facts; and the Commission having made its report, in which it stated its findings as to the facts and reached the conclusion that the respondents have vio-

Order.

9 F. T. C.

lated 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"; and the Commission having heretofore, to wit, on August 16, 1923, entered and served its order upon the respondents requiring them to cease and desist from certain practices; and it appearing to the Commission upon reconsideration of the matter that said order should be modified in certain respects; and the respondents having made, executed and filed a modified agreed statement of facts in which it is stipulated and agreed by respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony in support of the charges in the complaint or in opposition thereto and proceed further upon such agreed statement of facts to make its report in said proceeding stating its modified findings as to the facts and conclusion and entering its modified order disposing of the proceeding; and the Commission having made its report in which it stated its modified findings as to the facts and reached the conclusion that the respondents have violated 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,"

Now, therefore, The Federal Trade Commission under and by virtue of the provisions of Section 5 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," hereby orders that the order to cease and desist heretofore made in this proceeding on October 20, 1923, be, and the same is hereby, modified so that, as modified, said order shall read as follows, to wit:

It is now ordered, That the respondents, their representatives, agents and employees, shall cease and desist from—

1. Using the words "Pure Shellac" or "Shellac" alone or in connection with a color adjective, unless the product designated is pure shellac gum dissolved or cut in alcohol.

2. Using the word "Shellac" or the words "White Shellac," alone or in connection with any other word or words to designate a product which is not pure shellac but in which shellac gum is the principal and predominant element, unless accompanied by the word "compound" in equally conspicuous letters.

3. Using the word "Shellac" or the words "White Shellac," alone or in connection with any other word or words, to designate a product which is not pure shellac and in which shellac gum is not the principal and predominant element, unless accompanied by the word "substitute" in equally conspicuous letters.

Memoranda.

And it is further ordered, That the respondent shall, within 60 days from 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 herein set forth.

By the Commission, Commissioners Nugent and Thompson dissenting, based on their views as expressed in the Don-O-Lac case.¹

MEMORANDA

The Commission as of the same date also made substantially similar findings and orders, Commissioners Nugent and Thompson dissenting, in the following cases:

MAX BAER AND A. BAER, PARTNERS DOING BUSINESS UNDER THE NAME AND STYLE BAER BROTHERS. Docket 1055 (modified findings and order).²

Appearances: *Mr. William A. Sweet* for the Commission.

DEGOLYER VARNISH WORKS. Docket 1095.

Appearances: *Mr. William A. Sweet* for the Commission.

¹ Dock 924. See 8 F. T. C. 235 at page 242.

² Original findings and order published in 6 F. T. C. 481.

IN THE MATTER OF
BONI & LIVERIGHT, INCORPORATED.

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

Docket 1277—April 23, 1925.

SYLLABUS.

Where a corporation engaged in the publication and sale of books, including a series bound in a cloth binding containing no leather but so finished that it closely simulated the appearance and texture thereof, and by it published and sold under the name of the "Modern Library" in competition with concerns engaged in the sale of similar books bound in leather and with concerns engaged in the sale of books not so bound or represented as so being;

- (a) Printed the words "Limp Croftleather" on the back of each of the paper wrappers of the books in the aforesaid series; and
- (b) Used such statements in describing the same in its catalogues, leaflets, price lists and other trade literature as "Modern Library Volumes are bound by hand of limp leather," and "All the books in the modern library are hand bound in flexible style";

With the effect of misleading and deceiving the purchasing public in reference to the binding of said books and thereby causing them to purchase the same, and of diverting business from and otherwise injuring competitors:
Held, That such mislabeling, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

Mr. Robert O. Brownell for the Commission.

Hays, St. John & Buckley, 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 Boni & Liveright, Incorporated, 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 New York with its principal office and place of business in the City of New York, in said State. It is engaged in the publication of books and the sale thereof to retail dealers located at points in various States of the United States. It causes its said