

Complaint.

9 F. T. C.

IN THE MATTER OF

H. O. GREENBAUM, TRADING AS TECHNICAL COLOR & CHEMICAL WORKS, AND VICTORY SHELLAC WORKS.

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

Docket 1056—June 30, 1925.

SYLLABUS.

Where an individual engaged in the manufacture and sale of paints, varnishes, shellac, and shellac substitutes, including a product composed of a small percentage of pure shellac gum, and in some instances no shellac gum whatever; sold said product labeled, branded, and advertised as "Red Devil Shellac" and "Victory White Shellac," and represented on the labels on the containers thereof as guaranteed to be pure shellac gum dissolved in denatured alcohol, 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 equalled or exceeded ~~one-half~~ half of 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~~ ^{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 with the capacity and tendency to induce the purchase thereof in such belief:

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

Mr. William A. Sweet for the Commission.

Mr. J. T. Watkins 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 H. O. Greenbaum, trading as Technical Color & Chemical Works, and Victory Shellac Works, hereinafter referred to as respondent, has been and is using unfair methods of competition in 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 trading under the names of Technical Color & Chemical Works and Victory Shellac

Works, with its plant and general office located at 382 Hudson Street, New York City, State of New York. He is, and at all times hereinafter mentioned has been engaged in the business of manufacturing, selling and distributing paint, varnishes and shellacs and substitutes for shellac to painters, jobbers, dealers and the public generally throughout the United States. In the course and conduct of his business respondent causes his 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. At all times hereinafter mentioned said respondent is and has been in competition with other persons, partnerships and corporations engaged in a similar business in interstate commerce.

PAR. 2. Respondent in the course and conduct of his said business has caused, for more than one year last past and still causes to be manufactured and sold to jobbers, dealers and the purchasing public throughout the United States by means of traveling salesmen, mail orders and otherwise, a product composed of a small percentage of pure shellac gum and in some instances no shellac gum whatever, labeled, branded and advertised as "Red Devil Shellac" and "Victory White Shellac," representing in the labels on the containers of said products that the contents thereof are guaranteed to be pure shellac dissolved in denatured alcohol without indicating in any way whatever on such labels and in such advertisements that said product contained any gum other than pure shellac gum. The said labels and advertisements of said product by respondent, as aforesaid, are false and misleading and have the capacity and tendency to mislead and deceive the said purchasers thereof, the trade and the purchasing public into the belief that the product so labeled, branded and advertised is composed only of genuine shellac gum dissolved in alcohol and to induce said purchasers to purchase said product in that belief. Shellac or shellac varnish as commercially known and sold to jobbers, dealers and the purchasing public is a product composed solely of genuine shellac gum dissolved in alcohol and is so understood by said jobbers, dealers and the purchasing public.

PAR. 3. There are engaged in selling in commerce among the several States of the United States 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.

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PAR. 4. The above alleged acts and things done by respondent are all to the prejudice of the public and of 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.

MODIFIED FINDINGS AS TO THE FACTS, REPORT,
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 respondent, H. O. Greenbaum, trading as Technical Color & Chemical Works and the Victory Shellac Works, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having entered his appearance and filed his answer therein, and having made, executed and filed an agreed statement of facts on November 14, 1923, and the Federal Trade Commission having made its report containing its findings as to the facts and conclusion and having entered its order thereon on November 14, 1923, and it appearing to the Commission that its said findings as to the facts and the order thereon should be modified in certain respects and the respondent having made, executed and filed a modified agreed statement of facts, in which it is stipulated and agreed by the 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, or in opposition thereto, and the Federal Trade Commission being now fully advised in the premises makes this its modified findings as to the facts and conclusions drawn therefrom.

MODIFIED FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is an individual trading under the names of Technical Color & Chemical Works and Victory Shellac Works, with his plant and general office located at 382 Hudson Street, New York City, State of New York. He is, and at all times hereinafter mentioned has been engaged in the business of manufacturing, selling and distributing paint, varnishes and shellacs and substitutes for shellac to painters, jobbers, dealers and the public

¹ Original findings and order reported in 7 F. T. C. 49.

generally throughout the United States. In the course and conduct of his business respondent causes his 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. At all times hereinafter mentioned said respondent is and has been in competition with other persons, partnerships and corporations also engaged in the manufacture and/or sale of paint, varnishes and allied products in interstate commerce.

PAR. 2. Respondent in the course and conduct of his said business, in the month of September, 1922, and for sometime prior thereto, manufactured and sold to jobbers, dealers and the purchasing public throughout the United States by means of traveling salesmen, mail orders and otherwise, a product composed of a small percentage of pure shellac gum and in some instances no shellac gum whatever, which product respondent labeled, branded and advertised as "Red Devil Shellac" and "Victory White Shellac," representing in the labels on the containers of said products that the contents thereof are guaranteed to be pure shellac gum dissolved in denatured alcohol without indicating in any way whatever on such labels and in such advertisements that said product contained any gum other than pure shellac gum.

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 then detached from the tree 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

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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.

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, it serves 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 word 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 large proportion of the manufacturers of shellac are labelling or branding their shellac, shellac compounds and shellac substitutes 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" without qualification except as to color 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 respondent of the labels "Red Devil Shellac" and "Victory White Shellac" respectively, upon the containers of the varnishes composed of shellac gum mixed with a large quantity of shellac gum substitutes manufactured, sold and shipped by respondent 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 practice of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods

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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."

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 respondent, and an agreed statement of facts, and the Commission having made its findings as to the facts with its 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," and the Commission having heretofore, to wit, on November 14, 1923, entered and served its order on the respondent requiring him 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 respondent having made, executed, and filed a modified agreed statement of facts in which it is stipulated and agreed by the respondent 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 stated in the complaint, or in opposition thereto, and proceed forthwith 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 respondent has 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"; the Commission hereby orders that the order to cease and desist heretofore made in this proceeding on November 14, 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 respondent, his representatives, agents and employees, shall cease and desist from—

1. Using the words "Red Devil Shellac," "Victory White Shellac," "Pure Shellac" or "Shellac" alone or in connection with any other word or words, unless the product designated is pure shellac gum dissolved or cut in alcohol.

2. Using the words "Red Devil Shellac," "Victory White Shellac," or "Shellac" alone or in connection with any other word or

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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 words "Red Devil Shellac," "Victory White Shellac" or "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.

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: Commissioner Nugent dissenting for reasons stated in the Don-O-Lac case.¹

¹ See 8 F. T. C. 235 (Order issued as of Nov. 4, 1924. Docket 924).

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IN THE MATTER OF
BALTIMORE PAINT & COLOR WORKS, INCORPORATED.

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

Docket 1265—June 30, 1925

SYLLABUS.

Where a corporation engaged in the manufacture of an inferior paint, neither manufactured for, nor prepared in accordance with any specifications of, the United States Army, nor of the quality required by it, nor war surplus, and in the sale thereof in standard gallon and half gallon sizes:

- (a) Placed upon said cans or containers, labels or brands which denominated and described said paint as "CANTONMENT PAINT," "ARMY BUILDING PAINT SPEC. VE-3 DIST. 4 FORM 35-B," and "REGULATION BUILDING PAINT SPEC. NO. BP-3-81 REQ'N NO. D49 ORDER NO. GM-521 COLOR DK. GREEN," together with a shield or coat of arms simulating that of the United States Government; with the capacity and tendency to mislead and deceive the trade and purchasing public in reference to the quality and manufacture of said paint and the circumstances attendant upon its offer and sale, and to induce its purchase in such mistaken belief; and with the effect of enabling and assisting retail dealer customers successfully to misrepresent the facts to prospective purchasers in reference to the aforesaid paint, as above indicated; and
- (b) Placed therein quantities which were less than one gallon or one-half gallon, as the case might be; with the capacity and tendency to mislead and deceive the purchasing public in respect of the quantities they were actually securing in purchasing the aforesaid cans or containers of paint;

With the result of diverting trade and custom from and otherwise injuring and prejudicing competitors who neither misrepresented the products dealt in by them as to their quality or quantity and the circumstances attendant upon their offer and sale:

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

Mr. Otto R. Stites for the Commission.

Mr. Jacob M. Moses of Baltimore, Md., 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 Baltimore Paint & Color Works, Inc., a corporation, more particularly hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation