

Complaint.

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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

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, Baltimore Paint & Color Works, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principle or executive offices and manufacturing plant located in the city of Baltimore, State of Maryland. It is now and has been for more than one year last past engaged in the business of manufacturing, selling and distributing in interstate commerce in wholesale and/or retail quantities paints, colors, varnishes and kindred products. Respondent causes said products so manufactured when sold to be shipped or transported in interstate commerce from its principal place of business or its manufacturing plant in the State of Maryland to purchasers thereof located in other States of the United States, and there is now and has been at all times hereinafter mentioned a constant current of trade and commerce in said products so manufactured and sold by said respondent between and among various States of the United States. In the course of its said business respondent was at all times hereinafter mentioned and still is in competition with other individuals, firms, partnerships and corporations also engaged in the manufacture of paints, colors, varnishes and kindred products, and in the sale of the same in interstate commerce between and among various States of the United States.

PAR. 2. Respondent, Baltimore Paint & Color Works, Inc., selling its products under the following trade names, Monitor Paint & Varnish Works, M. P. V. Paint & Varnish Company and Endurance Paint & Varnish Works, in the course and conduct of its business as described in paragraph 1 hereof, for more than one year last past, as a means of inducing the public to purchase paint manufactured by it, has caused its said paint to be falsely denominated, represented and described on the labels affixed to the cans containing said product as "Regulation Building Paint," "Cantonment Paint" and "Army Building Paint," which said trade brands or labels are either used independently or in conjunction with other qualifying words, letters or figures indicating or representing specification, requisition or order numbers so as to resemble or otherwise simulate the specification, requisition and order numbers appearing on surplus goods sold by the United States Government and commonly used by the War Department to designate products made for or in accordance with Army specifications or Government requirements, when in truth and in fact the said paint so denominated, represented and described by respondent is not surplus paint sold by the United States Govern-

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ment and is not manufactured in accordance with Army specifications or Government requirements.

PAR. 3. That the use by the respondent of the words, "Regulation," "Cantonment" and "Army" as a trade brand or label, either independently or in conjunction with other words in denominating, representing or describing the aforesaid paint manufactured and sold by it, or the use by the respondent of one or more of the aforesaid words as its trade brand or label, or as part of its trade brand or label in connection or conjunction with other words, letters, or figures indicating or representing specification, requisition and order numbers so as to resemble or otherwise simulate the specification, requisition, and order numbers appearing on surplus goods sold by the United States Government and commonly used by the War Department to designate products made in accordance with Army specifications or Government requirements, when such paint was not declared surplus and was not sold by the said United States Government or was not made in accordance with Army specifications or Government requirements, has the capacity and tendency to mislead and deceive the purchasing public and/or does mislead and deceive the purchasing public into the belief that said paint was declared surplus and sold by the United States Government or was made in accordance with Army specifications or Government requirements, and tends to and does cause such purchasers to purchase said paint in that belief and to thereby divert trade from the truthfully marked product.

PAR. 4. Respondent, Baltimore Paint & Color Works, Inc., selling its products under the aforementioned trade names and under the aforesaid trade brands or labels, for more than one year last past, in the course and conduct of its business as described in paragraph 1 hereof, has sold its said product in interstate commerce to purchasers located in various States of the United States in cans or containers of the recognized standard shape and size of one gallon and one-half gallon, respectively, which said one gallon and one-half gallon cans contain in varying quantities less than one gallon and one-half gallon of respondent's product. That the sale by respondent of its said product in interstate commerce in cans or containers of the recognized standard shape, size, and measure of one gallon and one-half gallon, respectively, has the capacity and tendency to mislead and deceive the purchasing public and/or does mislead and deceive the purchaser into the erroneous belief that said cans contain the recognized standard quantity of one gallon and one-half gallon, respectively, when in truth, and in fact the said cans contain in varying quantities less than the recognized standard quantity of one gallon and one-half gallon.

PAR. 5. That it is now and has been the custom of paint manufacturers for a long number of years to advertise, offer for sale, and sell paint in recognized standard containers in quantities of one gallon and one-half gallon; that there are a considerable number of competitors of respondent who manufacture and market their product in interstate commerce in one gallon and one-half gallon cans, which said one gallon and one-half gallon cans contain one gallon and one-half gallon, respectively, of said product, which said product is sold in competition with the product of respondent.

PAR. 6. 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 interstate 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 respondent, Baltimore Paint & Color Works, Inc., 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 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 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 the same or in opposition thereto, and thereupon this proceeding came on for decision, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Baltimore Paint & Color Works, Inc., is a corporation existing under the laws of the State of Maryland with its principal office and place of business located in the city of Baltimore, in said State. It is now and has been for more than three years last past, engaged in the manufacture of paints and kindred products and in the sale thereof to purchasers located in the several States of the United States. The respondent causes its said products, when sold, to be transported from the city of Baltimore, in

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the State of Maryland, into and through the several States to the aforesaid purchasers. In the conduct of its business the respondent is and has been at all times herein mentioned in competition with other individuals, partnerships and corporations engaged in the manufacture and sale of paints and kindred products.

PAR. 2. In the conduct of its business during the time aforesaid, the respondent, trading as the "Monitor Paint & Varnish Works," "M. P. V. Paint & Varnish Company" and "Endurance Paint & Varnish Works," has sold paint in cans or containers of recognized standard sizes of one gallon and one-half gallon, respectively. On such cans or containers the respondent has affixed labels or brands which denominated and described the said paint as—

- (a) "CANTONMENT PAINT"
- (b) "ARMY BUILDING PAINT"
SPEC. VE-3 DIST. 4
FORM 35-B"
- (c) "REGULATION BUILDING PAINT"
SPEC. NO. BP-3-81 REQ'N NO. D49
ORDER NO. QM-521 COLOR DK. GREEN"

The aforesaid labels denominating respondent's "Cantonment Paint" contained a shield or a coat of arms simulating in appearance the official seal or coat of arms of the United States Government.

PAR. 3. For more than four years last past large quantities of merchandise and commodities of all kinds, manufactured for the United States Government for purposes of the Army and Navy, under Government specifications, have been declared to be "War Surplus Material" by the Army and Navy and have been sold by the Government to dealers, and by said dealers to the purchasing public at prices greatly less than the customary prices for merchandise of like grade or quality. The purchasing public has come to recognize that the said merchandise placed on the market as "War Surplus Material" may be purchased at a price greatly less than the customary price for merchandise of like grade or quality which has been placed on the market through the regular channels of trade.

PAR. 4. The aforesaid labels affixed by respondent to the cans containing its paint have the capacity and tendency to mislead and deceive the trade and the purchasing public into the belief that the said paint is of high grade, manufactured for the United States Army and prepared in accordance with the specifications or requirements of said Army, or that the said paint is of the quality required by such specifications and that the said paint so labeled is "War Surplus Material," and to induce the trade and public to purchase

the said paint in that belief. Respondent's paint is of inferior grade and is not manufactured for the United States Army and is not prepared in accordance with any specifications of the said Army and is not of the quality required by the said Army and is not "War Surplus Material."

PAR. 5. The aforesaid cans or containers in which the respondent markets its products, which are of the recognized standard sizes of one gallon and one-half gallon, contain an amount less than one gallon and one-half gallon of paint content. Respondent's practice of placing less than one gallon and one-half gallon in said cans or containers has the capacity and tendency to mislead and deceive the purchasing public into the belief that they secure one gallon and one-half gallon of paint when they purchase the respondent's product, when in truth they receive an amount less than one gallon and one-half gallon of paint in the said cans or containers.

PAR. 6. The said labels or brands affixed by respondent to its products enables, aids and assists retail dealers handling said products to successfully represent to prospective purchasers that the said paint was made for the United States Army, and/or made in accordance with specifications of said Army, and/or is of the quality required by the said Army, and/or is "War Surplus Material," and to sell the said paint under the said representations.

PAR. 7. There are among the competitors of respondent many who do not falsely represent or denominate their products as having been made for or in accordance with specifications of the United States Army and that the product manufactured and sold by them is "War Surplus Material." There are also many competitors of respondent who sell their products in one gallon and one-half gallon cans or containers who do not fill their cans or containers with an amount of paint less than one gallon and one-half gallon. The practice of respondent in labeling its products, as hereinabove described, and the practice of respondent in placing in its cans or containers an amount of paint less than one gallon and one-half gallon tends to and does divert trade and custom from, and otherwise injure and prejudice the said competitors.

PAR. 8. Since February 1, 1925, respondent has added to its labels designating its "Army Building Paint," hereinbefore referred to as label (b), in small type the following statement, "This is not Government Surplus Merchandise." It has in no wise changed the other labels hereinbefore referred to.

CONCLUSION.

The practices of respondent, Baltimore Paint & Color Works, Inc., under the conditions and circumstances described in the fore-

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going 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 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 the statement of facts agreed upon by counsel for the Commission and the respondent, 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";

It is now ordered, That the respondent, Baltimore Paint & Color Works, Incorporated, its officers, agents, representatives and employees, do cease and desist—

(a) From using the word "Army" or words or symbols of similar import, or any word or words or symbol or device denoting or indicating its paint is manufactured by or for the United States Government, on labels, in advertising matter or otherwise, to designate paint offered for sale or sold by the respondent which is not manufactured by or for the United States Government;

(b) From offering for sale or selling paint in cans or containers of recognized standard sizes of one gallon and one-half gallon, which said cans or containers contain less than one gallon and one-half gallon, respectively, of paint content, unless the said cans or containers are clearly marked or labeled to denote the quantity less than one gallon or one-half gallon of paint contained therein.

It is further ordered, That the respondent, Baltimore Paint & Color Works, Inc., 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.

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IN THE MATTER OF
GEORGE E. WATSON COMPANY.

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

Docket 1302—July 14, 1925.

SYLLABUS.

Where a corporation engaged in the sale of paints direct to consumers and other purchasers, including certain paints which it bought from others and resold under certain brand names to its customers at a profit;

- (a) Falsely represented in its advertisements that said last-named paints were composed of the purest and most durable materials, consisting solely of pure white lead, pure oxide of zinc, pure linseed oil, turpentine, and Japan dryer, and contained no benzine, water, china clay, silica or "whiting"; and
- (b) Falsely represented on the labels of one of said paints that it was the manufacturer thereof;

With the effect of misleading and deceiving the purchasing public into buying said paints in erroneous beliefs as to the composition thereof, and in the belief that in purchasing the above paint from such corporation they were dealing directly with the manufacturer thereof and thereby saving the profits of middlemen; and of thus diverting trade from truthfully marked paints sold and distributed by its competitors:

Held, That such false and misleading advertising, and such misrepresentation of business status, under the circumstances set forth, constituted unfair methods of competition.

Mr. Henry Miller 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 George E. Watson Co., 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 Illinois, with its principal office and place of business in the city of Chicago, in said State. It is engaged in the sale of various commodities direct to consumers thereof located at points in various States of the United States. Among the commodities so sold by respondent are paints and paint products. It causes said commodities when so sold to be transported from its place of business in the city of Chicago, State of Illinois, into and through