

Complaint.

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

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other States of the United States to said purchasers at their respective points of location. In the course and conduct of its said business respondent is in competition with other individuals, partnerships and corporations engaged in the sale and transportation of paints and paint products in commerce between and among various States of the United States.

PAR. 2. By advertising in newspapers and various other publications respondent solicits orders by mail for the commodities sold by it, and sends to customers and prospective customers in various States catalogues in which are described and depicted the commodities which respondent has for sale, and in which the prices charged by respondent for said commodities are set forth. Respondent procures orders by mail through the means above set out, and fills said orders by causing the commodities so ordered to be shipped from its said place of business in the city of Chicago, Ill., to such vendees.

PAR. 3. In its said catalogues respondent offers certain paints for sale under the brand "Monogram" paints, and certain other paints under the brand "Faultless" paints, and causes to be set forth in said catalogues statements and representations to the effect that said paints are composed of the purest and most durable materials, that said materials consist of pure white lead, pure oxide of zinc, pure linseed oil, turpentine, and Japan dryer, and that said "Monogram" paints contain no benzine, water, china clay, silica, or whiting, and possess the highest degree of durability. Further, respondent attaches to the containers in which its said Monogram paints are packed, shipped and sold labels upon which respondent causes to be printed a statement to the effect that said paints are strictly pure.

PAR. 4. For many years paint composed of white lead, oxide of zinc, linseed oil and turpentine, with or without the addition of Japan dryer, has been by the painting trade and consuming public considered to be the best and most durable paint which can be produced, and for many years has been and now is characterized and considered by many of the painting trade and consuming public as the only pure paint. Paints containing ingredients other than those above set out, and especially such ingredients as distillates of petroleum, commonly called mineral oils, calcium carbonate, commonly known as "whiting," and solid ingredients other than white lead and oxide of zinc, have been and now are regarded by the painting trade and consuming public as impure and inferior paints not possessing the durability and other desirable characteristics possessed by paint consisting only of white lead, oxide of zinc, linseed oil and turpentine, with or without the addition of Japan dryer.

PAR. 5. Respondent's said "Monogram" and "Faultless" paints referred to in paragraph 3 hereof, are not composed solely of white lead, oxide of zinc, linseed oil, turpentine and Japan dryer, but contain large quantities of calcium carbonate and distillates of petroleum in lieu respectively of white lead and linseed oil and said paints contain correspondingly small quantities of white lead and linseed oil.

PAR. 6. The representations of respondent in its catalogues all as set out in paragraph 3 hereof, are false and misleading and have the capacity and tendency to cause many among the consuming public to purchase respondent's said Monogram paints in the belief that they are composed solely of white lead, oxide of zinc, linseed oil, turpentine and Japan dryer.

PAR. 7. There are among the competitors of respondent mentioned in paragraph 1 hereof many who sell paints composed solely of white lead, oxide of zinc, linseed oil and turpentine, with or without the addition of Japan dryer, and who properly represent to the trade and public that their said paints are so composed, and respondent's above alleged acts and practices tend to and do divert business from and otherwise injure said competitors.

PAR. 8. Further, upon the labels attached to the containers in which said Monogram paints are packed, referred to in paragraph 3 hereof, respondent causes to be conspicuously printed a statement to the effect that respondent is the manufacturer of said paints. In truth and fact respondent does not manufacture said paints, but buys the same from others and resells same to the consuming public at a profit to respondent.

PAR. 9. Said representation that respondent is the manufacturer of said Monogram paints as in paragraph 8 hereof set out, has the capacity and tendency to mislead and deceive many of the consuming public into the belief that persons buying said paints from respondent are dealing direct with the manufacturer and thereby saving the profits of middlemen.

PAR. 10. There are among the competitors of respondent referred to in paragraph 1 hereof many who manufacture the paints and paint products in which they deal and who sell the same direct to the consuming public, and aforesaid representation made by respondent as set out in paragraph 8 hereof tends to and does divert business from and otherwise injure said competitors.

PAR. 11. The above alleged acts and practices of 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, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint upon the respondent, George E. Watson Co., a corporation, charging it with unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having entered its appearance and filed its answer, and an agreed statement as to the facts having been made and filed, in which it is stipulated that the facts therein recited may be taken as the facts in this procedure and in lieu of testimony, and upon such facts the Commission may proceed further to make its report in said proceeding, stating its findings as to the facts and its conclusion, and enter its order disposing of the proceeding.

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 conclusions drawn therefrom:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its office and place of business in the city of Chicago, in said State. It is, and has been for more than five years last past, engaged in the business of selling and distributing, from its said place of business in Chicago, Ill., directly to consumers and other purchasers located at points throughout the various States of the United States, certain paints which it labeled, denominated, and designated by the brand name "Monogram," and certain other paints which it labeled, denominated and designated by the brand name "Faultless." Its method of doing business is, and at all times herein mentioned has been, as set forth below. It causes advertisements of its said paint and other commodities to be inserted in newspapers and other publications of general circulation throughout several States, and it sends out catalogues from its place of business in Chicago, Ill., to customers and prospective customers located at points throughout the various States, in which advertisements and catalogues it describes, offers for sale at quoted prices, and solicits orders for, its said "Faultless" and "Monogram" paints. As a result of the use of said advertisements and catalogues, it receives orders for said paints by mail and otherwise, and in filling said orders it causes the said paint so sold to be transported in interstate com-

merce from its place of business in Chicago, State of Illinois, through and into other States of the United States, to the purchasers thereof in said other States, in the course and conduct of its business as described, respondent is, and at all times herein mentioned has been, in direct, active competition with many other persons, partnerships and corporations similarly engaged in the sale and distribution of paints and painting materials in commerce among the several States.

PAR. 2. In the course and conduct of its business as set forth above, respondent causes, and for more than two years last past has caused, statements and representations to be made in its said advertisements and catalogues to the effect that said "Monogram" and "Faultless" paints are composed of the purest and most durable materials; that said materials consist solely of pure white lead, pure oxide of zinc, pure linseed oil, turpentine and Japan dryer, and that said "Monogram" paint contains no benzine, water, china clay, silica or whiting, and possesses the highest degree of durability; and respondent further causes statements to be printed and set forth on the labels under which its said "Monogram" paint is packed, shipped and sold (which labels and statements are also set forth in its said catalogues), to the effect that the respondent is the manufacturer of said "Monogram" paint.

PAR. 3. Respondent's said "Monogram" and "Faultless" paints are not composed solely of white lead, oxide of zinc, linseed oil, turpentine and Japan dryer, but contain large quantities of calcium carbonate, commonly known and referred to as "whiting," and distillates of petroleum, in lieu, respectively, of white lead and linseed oil, and said paints contain correspondingly small quantities of white lead and linseed oil. Respondent is not now, nor has it been at any time herein mentioned, the manufacturer of said "Monogram" paints, but respondent buys said paints from others and resells same to its customers at a profit to respondent.

PAR. 4. The said statements and representations made by respondent in its said advertisements and catalogues, as set out in paragraph 2 hereof, are false, and have and had the capacity and tendency to and do mislead and deceive the purchasing public into buying said paint in the erroneous belief that (1) the pigment of said "Monogram" and "Faultless" paints consists solely of white lead and oxide of zinc; (2) the vehicle of said paint consists solely of linseed oil, turpentine and Japan dryer; (3) said paints contain no calcium carbonate, commonly known and referred to as "whiting," nor any solid ingredient other than white lead and oxide of zinc; (4) said paints contain no distillates of petroleum; (5) pur-

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chasers when buying said "Monogram" paint from respondents are dealing directly with the manufacturer thereof and are thereby saving the profits of middlemen. Said false and misleading statements and representations tend to and do divert trade from the truthfully marked and represented paints which are sold and distributed in interstate commerce by other concerns in competition with respondent.

CONCLUSION.

The practices of said respondent, under the conditions and circumstances set forth in the foregoing findings, are unfair methods of competition in interstate 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 the statement of facts agreed upon by the respondent and counsel for the Commission, 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, George E. Watson Co., its officers, directors, agents, representatives, servants and employees, cease and desist—

From making, publishing or circulating, or causing to be made, published or circulated, by means of newspaper advertisements, circulars, pamphlets, catalogues, labels, or by any other means whatsoever, statements and assertions to the effect—

(1) That respondent's "Monogram" or "Faultless" paints, or any other paints dealt in by it, contain no benzine, water, china clay, silica, whiting or calcium carbonate, when such is not true in fact;

(2) That said "Monogram" or "Faultless" paints, or any other paints dealt in by respondent, are composed, in whole or in part, of pure white lead, pure oxide of zinc, pure linseed oil, turpentine and Japan dryer, when such is not true in fact;

(3) That respondent is the manufacturer of said "Monogram" or "Faultless" paints, or any other of the paints dealt in by it, when such is not true in fact.

It is further ordered, That respondent file with the Federal Trade Commission, within sixty days from the date of this order, a report in writing setting forth in detail the manner and form in which it has complied with this order.

Syllabus.

IN THE MATTER OF
ISADOR SOMMERFELD, DOING BUSINESS UNDER THE
TRADE NAME AND STYLE OF DUBINER & SOMMER-
FELD.

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

Docket 1303—July 17, 1925.

SYLLABUS.

Where it had long been considered by many that tobacco grown on the Island of Cuba and known as "Havana Tobacco" was superior to tobacco grown elsewhere for the manufacture of cigars, that the choicest Havana tobacco was grown in that area of Cuba known as Vuelta Abajo, and that the appearance of the name "Garcia" in connection with cigars indicated that said cigars were made by manufacturers of Cuban nationality or descent of that name, were composed of Cuban grown tobacco exclusively, and were superior to those made by many other manufacturers and to cigars composed in whole or in part of tobacco grown elsewhere, and many of the public had become accustomed to calling for such cigars either by the name "Garcia" alone or in combination with the remainder of the name of a manufacturer of that surname; and thereafter an individual having no one so named connected with his concern, and engaged in the manufacture in the United States of cigars containing no tobacco grown in Cuba, and in the sale thereof;

Placed on his cigar boxes and cigar bands the words "Havana," "Vuelta Abajo" and "Garcia," and on the former the name "M Garcia y Ca." as the name of the manufacturer thereof; and also labels displaying an outline map of the Island of Cuba, and inscriptions in the Spanish language solely, to the effect that the cigars therein contained were of the finest Vuelta Abajo tobacco, guaranteed to be the best Havana tobacco, and that anyone representing the composition thereof to the contrary would be prosecuted to the fullest extent of the law, and furthermore displaying illustrations of Spanish scenes and persons, and of medals such as are customarily awarded to manufacturers or dealers for the exceptional quality of their products, notwithstanding the fact that said individual had never received any such medals;

With the intent and effect of misleading and deceiving many of the trade and purchasing public into believing that said cigars were an imported product, made of choicest Havana tobacco exclusively by such a manufacturer as above indicated, and of the finest quality; and of thereby inducing the purchase thereof in preference to products of competitors entitled to such names, and in preference to other products not so misrepresented:

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

Mr. Edward E. Reardon for the Commission.