

## Complaint.

IN THE MATTER OF  
ROSENBUSH & SOLOMON, INC.

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

*Docket 1279—November 6, 1925.*

## SYLLABUS.

Where a corporation engaged in the sale of paints, varnishes, shellac, and substitutes for shellac, sold shellac compounds composed of from 60 to 80 per cent of shellac gum, and from 40 per cent to 20 per cent of resin or other gums, dissolved in alcohol, in containers labeled "White Shellac" or "Orange Shellac," as required by the color, together with the word "compound" in inconspicuous letters; 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," confusion in the trade, and deception of purchasers, 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," in conspicuous letters, with the word "shellac," where the latter content equaled or exceeded one-half of the total solid content, and for the use of the word "substitute" or "imitation" with the word "shellac," in other cases; with the effect of misleading and deceiving a substantial part of the purchasing public into believing the aforesaid compounds to be composed solely of 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 compounds, labeled 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 Rosenbush & Solomon Company, 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

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sale of paints, varnishes and allied products to retail dealers located at points in various States of the United States. It causes said commodities when so sold to be transported from its said principal place of business in the city of Chicago, Illinois, into and through 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, varnishes and allied products in commerce between and among the various States of the United States.

PAR. 2. Respondent in the course and conduct of its said business, for more than a year last past has sold and supplied and still sells and supplies to said dealer vendees certain varnishes composed of shellac gum and various substitutes therefor dissolved in alcohol, wherein shellac gum is not the principal and predominant element. Respondent causes its said varnishes to be packed in containers to which respondent causes to be attached printed labels bearing in large and conspicuous letters the words "Orange Shellac" and "White Shellac" as the names and designations of said varnishes respectively. Said labels in no manner indicate that shellac gum is not the principal and predominant element of said varnishes, except that respondent causes to be stamped upon said labels with a rubber stamp the word "compound" in small and inconspicuous letters. Respondent supplies its said varnishes so labeled to its aforesaid dealer vendees who in turn offer for sale and sell said varnishes so labeled, to the consuming public.

PAR. 3. The word "shellac" standing alone or with a color adjective, when applied to varnish indicates that the product so designated contains shellac gum only, and to the exclusion of other gums and substitutes for shellac gum. Such varnish is hereinafter called "pure shellac." The words "shellac compound" standing alone or with a color adjective when applied to varnish, indicate that the product so designated contains shellac gum as its principal and predominant element in combination with a smaller quantity of other gums and substitutes for shellac gum.

PAR. 4. Aforesaid labeling by respondent of its said varnishes has the capacity and tendency to mislead and deceive that portion of the trade and public who do not observe the word "compound," inconspicuously appearing upon respondent's labels as hereinbefore set out, into the belief that respondent's said varnishes are pure shellac varnishes and to purchase said varnishes in that belief; and further said labeling has the capacity and tendency to mislead and deceive that portion of the trade and public who observe aforesaid word

"compound" upon said labels into the belief that respondent's said varnishes contain shellac gum as their principal and predominant element, and to purchase said varnishes in that belief.

PAR. 5. In order to protect the purchasing public from deception through improper and false representations in the sale of paints, varnishes and shellacs, and to promote the sale thereof upon terms of fair competition, 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% 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% by weight of shellac be sold under arbitrary trade names or brand.

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.

In response to the spirit and purpose of said resolution a very large proportion of the manufacturers of shellac are, and for more than one year last past have been, labeling and branding their shellac, shellac compounds and shellac substitutes in accordance with the terms of said resolution, and are, and during said time have been, selling their products so labeled and branded, in interstate commerce throughout the United States, in competition with the products of the respondent labeled and branded as set out in Paragraph 2 hereof.

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PAR. 6. There are among the competitors of respondent referred to in paragraph 1 hereof, and including the competitors mentioned in paragraph 5 hereof, many who sell pure shellac and who properly designate, brand and label same as shellac; there are others of said competitors who sell varnishes in which shellac gum is the principal and predominant element in combination with smaller quantities of other gums and substitutes for shellac gum, and who properly designate, label and brand their said varnishes as shellac compounds; there are others of said competitors who sell varnishes made in imitation of and as substitutes for shellac varnish and in which shellac gum is not the principal and predominant element, who truthfully designate, label and brand their said varnishes as substitutes or imitations, or who designate, label and brand their said varnishes with various fanciful names which in nowise represent that shellac gum is the principal and predominant element in such varnishes, and respondent's acts and practices all hereinbefore set out tend to divert business from and otherwise prejudice said competitors.

PAR. 7. For more than one year last past respondent has engaged in the practices under the circumstances and with the results all hereinbefore set out.

PAR. 8. 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 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 a complaint upon the respondent, a corporation organized under the laws of the State of Illinois under the name and style of Rosenbush & Solomon, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and filed its answer 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 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, 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 under the laws of the State of Illinois under the name and style of Rosenbush & Solomon, Inc., with its principal office and place of business in the city of Chicago in said State. Respondent was on February 7, 1925, and is still engaged in the business of selling and distributing paints, varnishes, shellac, and substitutes for shellac, to retail dealers in such products whose places of business are located in various States of the United States. In the course and conduct of its business respondent causes said products when so sold by it to be transported from its said principal place of business in the city of Chicago in the State of Illinois, into and through other States of the United States to the purchasers thereof located as aforesaid in States other than the State of Illinois.

There are other individuals, partnerships and corporations located in various States of the United States likewise engaged in the business of selling and distributing paints, varnishes, shellac, and substitutes for shellac to various users of such products and who cause such products when so sold to be transported from their several places of business into and through other States of the United States to the purchasers thereof located in the same States in which the respondent's customers are located.

**PAR. 2.** In the regular course of its business respondent sold 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 were 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, was marked "White Shellac," or "Orange Shellac," respectively, as the color of the shellac was properly indicated thereby. The product composed of less than 100 per cent pure shellac gum, which is adulterated by the addition of other gums than shellac gums, varying from 20 to 40 per cent of adulteration, dissolved in alcohol, was labeled "White Shellac," or "Orange Shellac," respectively, as the color of the shellac

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is properly indicated thereby except that respondent caused to be stamped upon such labels the word "compound" in small and inconspicuous letters. These products so packed, branded or labeled were sold by the respondent throughout the United States.

PAR. 3. "Shellac" is a distinctive commodity produced by insects, the Tachnardiæ Laccae, 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 encloses the entire swarms. 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 gumlike 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 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.

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 serve a useful purpose.

PAR. 6. On or about November 18, 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% 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% 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 labeling or branding their shellac, shellac compounds and shellac substitutes

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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 the word "substitute" as a qualification of 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 the respondent of the labels "White Shellac" or "Orange Shellac," as the color of the shellac is properly indicated thereby, with the addition of the word "compound" in small and inconspicuous letters stamped upon such labels, upon the containers of 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 or 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."

By the Commission: Commissioners Nugent and Thompson dissenting for the reasons given in their dissenting opinions in the Don-O-Lac Company case, Docket 924.

#### 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 in which it is

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<sup>1</sup> See 8 F. T. C. 235 at 242 and 247.

stipulated and agreed by 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 report stating its findings as to the facts and enter its order disposing of the proceedings, and the Commission having made its report, in which it stated its 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,"

*Now, therefore, it is ordered,* That the respondent, its officers, directors, agents and employees, shall cease and desist from—

1. Using the words "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 word "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" 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: Commissioners Nugent and Thompson dissenting for the reasons given in their dissenting opinions in the Don-O-Lac Company case, Docket 924.<sup>1</sup>

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<sup>1</sup> See 8 F. T. C. 235 at 242 and 247.

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IN THE MATTER OF  
CHERO-COLA COMPANY.

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

*Docket 1309—November 7, 1925.*

## SYLLABUS.

Where a corporation engaged in the manufacture of a soft drink concentrate, and in the sale thereof to bottlers, required its aforesaid bottler vendees to contract to observe certain fixed minimum selling prices, with the effect of substantially restraining competition in the sale of the beverage in question, both in concentrate and bottled form, and of restraining and restricting competition among and between said bottlers, and with the tendency and capacity to restrain competition in commerce:

*Held*, That the making of such contracts, under the circumstances set forth, constituted an unfair method of competition.

*Mr. Richard P. Whiteley* for the Commission.

*Arnold & Battle*, of Columbus, Ohio, 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 the Chero-Cola Company, 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 Georgia, with its principal office and place of business in the city of Columbus, in said State. It is engaged in the manufacture of a certain concentrate which when mixed with water and charged with carbonic acid gas forms a certain beverage, which beverage is by respondent named and designated Chero-Cola. Respondent sells its aforesaid concentrate to various individuals, partnerships, and corporations located at points throughout the various States of the United States. Said vendees, hereinafter called bottlers, are engaged among other things in the business of mixing said concentrates with water, of bottling and charging same with carbonic acid gas, thus producing said beverage Chero-Cola,