

Complaint.

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IN THE MATTER OF  
BROOKS OIL CO. AND E. A. BENEDICT.

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

*Docket 974—November 25, 1925.*

## SYLLABUS.

Where a corporation engaged in the manufacture and sale of paints, and a salesman of said corporation, sold a paint of inferior quality neither used by the Government nor made in accordance with its specifications, in containers labeled "U. S. Quality, Ready Mixed Paint," and "U. S. Quality Mixed Paint, Ready for Use," without placing its name thereon as the manufacturer, and chiefly to concerns engaged under such names as "Army and Navy Stores," "U. S. Surplus Stock Stores," etc., in the sale of army and navy surplus goods; with the result that ultimate purchasers were induced to buy said paint so labeled as and for a product made for the use of the Government and in accordance with its specifications:

*Held*, That the sale of products labeled as above set forth constituted an unfair method of competition.

*Mr. Robt. N. McMillen* for the Commission.

*Mr. Albert Mendelson*, of Cleveland, Ohio, for respondents.

## 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 Brooks Oil Co., sometimes trading under the name of Para Paint Co., and E. A. Benedict, hereinafter referred to as respondents, have been and are 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 Brooks Oil Co. is a corporation organized under the laws of the State of Ohio and having its principal office and place of business at Cleveland in said State. Said respondent is engaged in the manufacture and sale of paints, oils, and similar products to the trade and consuming public. In selling its lower grade paints respondent also uses the trade name Para Paint Co. In the course of its business respondent causes a substantial portion of the products manufactured by it to be transported from the State of Ohio to purchasers thereof in other States and Territories of the

United States, and is in direct active competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. Respondent E. A. Benedict, residing at Cleveland, Ohio, is engaged in the business of selling paints, oils, and similar products on commission for various manufacturers, including the respondent Brooks Oil Co., and causes said products to be delivered to retail dealers and consumers purchasing the same and residing in States other than the State in which the same are manufactured, and is in direct active competition with other individuals, partnerships and corporations similarly engaged.

PAR. 3. In the course of his said business respondent Benedict originated and devised various misleading and deceptive labels and furnished the same to respondent Brooks Oil Co. and said respondent Brooks Oil Co., under the trade name of Para Paint Co., at said Benedict's request, placed said labels upon the containers of house paint manufactured by said Brooks Oil Co. and delivered the same to customers secured by said Benedict. Among such misleading and deceptive labels was one bearing the words "U. S. Quality Paint" and omitting the name of the manufacturer. House paint so labeled was sold and delivered in large quantities by said respondents, acting in concert, both to consumers and to retail dealers in various States, including many dealers engaged or purported to be engaged in selling Government surplus goods, and to concerns doing business under the names "Army Stores," "Army and Navy Stores," "United Surplus Stores," and similar designations.

PAR. 4. In the course of their said businesses said respondents Brooks Oil Co. and E. A. Benedict, cooperating together in the sale of said paint, have falsely represented, advertised, and labeled the same as being "U. S. Quality Paint," and have furnished said retail dealers with cuts and forms for advertising said paint as "U. S. Quality Paint," and many of said dealers have thereby been enabled to and have advertised and sold said paint to the consuming public as "U. S. Quality Paint" and have represented the same, in some instances, to have been manufactured for or used by the United States Government, and complied with the specifications and requirements of such Government; whereas, in fact, said paint was a low grade product and had not been made for nor used by the United States Government and was not Government surplus paint and had not been made according to any Government specifications or requirements.

PAR. 5. The words "U. S. Quality Paint" as used by said respondents in the sale of said paint and on the labels attached to the containers thereof, and in the cuts and forms of advertising furnished by them to said retail dealers as described in paragraph 4

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hereof, signify to and are understood by a substantial part of the purchasing public to mean a high grade paint manufactured for or used by the United States Government and prepared according to specifications or requirements of said Government and of the quality required by such specifications and requirements, and said labels and advertisements used by respondents, and the representations made by respondent Benedict to said retail dealers as aforesaid are false and have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said paint made and sold by respondents is a high grade paint manufactured for and used by the United States Government, and to induce them to purchase the same in that belief.

PAR. 6. The above alleged acts and things done by the respondents and each of them as aforesaid 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, 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 complaint upon the respondents, Brooks Oil Co. and E. A. Benedict, charging them with the use of unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act of Congress.

The said respondents having entered their appearance and filed their answers herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondents, before William F. Dinnen, an examiner of the Federal Trade Commission, duly appointed; and the attorney for the Commission having filed a brief herein.

Thereupon, these proceedings came on for decision, without oral argument, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and conclusions drawn therefrom.

**FINDINGS AS TO THE FACTS.**

PARAGRAPH 1. The respondent, Brooks Oil Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal place of business at Cleveland in said

State. During the years 1920 and 1921 it manufactured and sold lubricating oil, gasoline, greases and paint. During said period the paint business of respondent, Brooks Oil Co., was carried on under the trade name of Para Paint Co. In the sale of said paint respondent, Brooks Oil Co., caused its paint to be transported from Cleveland, in the State of Ohio, through and into other States of the United States, to purchasers of said paint located in various other States of the United States, more particularly in the States east of the Mississippi River. In the sale and transportation of said paint as heretofore set out the respondent company was in active and direct competition in commerce with other persons, firms and corporations similarly engaged and who shipped such products from their places of business to purchasers located in States of the United States other than those in which said respective places of business are located.

PAR. 2. During the years of 1920, through 1921 and into the year 1922, respondent, E. A. Benedict, was employed by respondent, Brooks Oil Co., as a paint salesman and during said time sold such products for the respondent in the territory above described as covered by respondent, Brooks Oil Co. At the present time, said respondent Benedict is a sales manager for the respondent, Brooks Oil Co., and has charge of the sales in the paint department of respondent company.

PAR. 3. During the said years of 1920 and 1921 the respondent Brooks Oil Co. manufactured and sold as aforesaid two grades of paint. The higher grade of paint was manufactured and sold, as aforesaid, under the label "Para Mixed Paint manufactured by Para Paint Co.," Cleveland, Ohio, U. S. A. The lower grade of paint, so manufactured and sold, was sold during said years under various names. Stock labels in blank were purchased in quantity and on them would be printed the name desired by a customer or suggested by respondent, Brooks Oil Co., or respondent Benedict.

PAR. 4. In the year 1920 the respondent, Brooks Oil Co., began selling its lower grade of paint through its salesman, respondent Benedict, in the several States heretofore mentioned, under the label "U. S. Quality, Ready Mixed Paint" and "U. S. Quality, Mixed Paint, ready for use" and in each case also indicating on the label the color of the paint in the particular container. One of these colors was designated as "Battleship Grey." The words "U. S. Quality" appearing on these labels were used at the suggestion of respondent Benedict. The labels designating the paint as "U. S. Quality" did not carry the name of the manufacturer.

PAR. 5. The use of the words "U. S. Quality" on its labels was discontinued by respondent Brooks Oil Co. when the Commission commenced the investigation of this matter, in the year 1921.

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PAR. 6. During the time that this label was in use, as aforesaid, there were throughout the United States retail stores that handled surplus Army and Navy goods, that is, goods, wares and merchandise of all kinds that had been manufactured for purchase by the United States for use in the World War, the surplus of which, after that emergency had passed, had been sold by the Government to these stores. Many of these stores were called "Army and Navy Stores," "United States Army Stores," "United States Surplus Stock Stores," and similar names indicating and advertising that they had for sale such merchandise, while some retail stores not so named handled such goods and advertised them as such. It was generally understood by the buying public in purchasing such goods that they were getting superior merchandise at a price under the real market value.

PAR. 7. Out of 15 customers of the respondent, located in Ohio and Michigan who had purchased this lower grade of paint under the label "U. S. Quality," 10 of them handled and advertised that they handled these so-called Army and Navy surplus goods. In selling said paint, so labeled "U. S. Quality, ready mixed" and "U. S. Quality, mixed paint ready for use," as aforesaid, respondent, Benedict, selected for the most part as its customers persons, firms, and corporations operating stores that dealt in surplus Army and Navy goods; and in the sale of said last-described paint, in some instances said respondent Benedict represented to prospective purchasers that the paint having on the cans the labels "U. S. Quality Paint," was surplus Army and Navy paint. In some instances the respondent, Benedict, represented to the customers of the respondent, Brooks Oil Co., that the said paint was made in accordance with the United States Government formula and specifications. Some of the dealers who bought this paint through respondent, Benedict, in cans bearing the "U. S. Quality" labels, placed said paint in their stores with various surplus Army and Navy goods. One of the said dealers advertised to the public that said paint which he had purchased through said respondent, Benedict, was "U. S. Quality Paint" and that the Government had used millions of gallons of this paint. In some instances said dealers represented to purchasers that said paint was made in accordance with the United States Government specifications.

PAR. 8. Said paint so manufactured and sold bearing the labels "U. S. Quality, Ready mixed paint" and "U. S. Quality, mixed paint, ready for use" as aforesaid, was of an inferior quality. The Government had never used such paint nor was said paint made in accordance with United States Government specifications.

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## Order.

PAR. 9. The said labels bearing the words "U. S. Quality, ready mixed paint" and "U. S. Quality mixed paint, ready for use," were placed on said cans of paint, so sold and manufactured by respondent, Brooks Oil Co., by employees of the last-named respondent upon receipt of orders therefor from the said respondent, Benedict.

PAR. 10. Ultimate purchasers of said paint bearing the labels "U. S. Quality, ready mixed paint" and the label "U. S. Quality, mixed paint ready for use" were induced by such labels to purchase the same and were made to believe by the use of such labels that the paint was in fact a product made for the use of the United States Government and that said paint was made in accordance with United States Government specifications.

## CONCLUSION.

The practices of the respondent under the conditions and circumstances herein set forth are unfair methods of competition in interstate commerce and constitute a violation 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."

## ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents, and the evidence adduced at the hearing hereof, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated 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,"

*It is now ordered*, That respondent, Brooks Oil Co., its officers, agents and employees, and respondent, E. A. Benedict cease and desist from using the words "U. S. Quality," or words of similar import on labels, in advertising matter or otherwise to describe or designate paint which is not made for or manufactured by the United States Government.

*It is further ordered*, That respondents, Brooks Oil Co. and E. A. Benedict, shall within 60 days after the services upon them of a copy of this order, file with this 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.

IN THE MATTER OF  
EDISON FIXTURE COMPANY, INCORPORATED.

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

*Docket 1260—November 23, 1925.*

**SYLLABUS.**

Where the word "Edison" had come to mean to the public that electrical devices offered and sold under said name, or dealt in by a company which as an immediate or mediate licensee of the famous inventor, included the word in its name, were of the highest quality and efficiency and sold by reliable concerns under the authority or license of the aforesaid inventor; and thereafter a corporation which (1) dealt in an electrical fixture for the illumination of offices, stores, etc.; (2) sold the same through salesmen and agents; (3) used in the sale thereof a form contract which recited, among other things, "These lamps are not on trial. They are sold," and that upon failure to pay any installment due, the entire amount remaining unpaid on the contract would become due and immediately recoverable; (4) had no license or authority from the aforesaid inventor to use the word "Edison" in its business; and (5) operated in a territory served by two very large genuine Edison companies, one of which was popularly known therein as "The Edison"; for the purpose of trading upon the name of said inventor and of legitimate Edison companies, and of deceiving prospective customers and securing their signatures to the absolute contract of sale set out by it in its aforesaid form contract, without a reading thereof,

- (a) Adopted and used as a corporate name a name which included the words "Edison fixture";
- (b) Made at first no notation, and later an inconspicuous one only, in its form contracts, to the effect that it had no connection with the aforesaid Edison companies;
- (c) Represented itself to prospective customers as "The Edison," "The Edison Company" and as a branch of the company above referred to, and the same concern;
- (d) Represented its fixtures as said inventor's latest invention and one which constituted a great improvement in lighting methods and would give a greater amount of illumination than other fixtures using bulbs of the same wattage and voltage, the fact being that such fixtures consisted of reflectors, globes and ordinary commercial bulbs purchased in the open market;
- (e) Pretended to demonstrate the truth of its aforesaid representations through concealing the wattage consumption of bulbs actually used or using bulbs designed to operate upon a substantially lower voltage than that employed in the demonstration, with the result that the latter gave a more brilliant light at the time, but soon burned out;
- (f) Falsely represented that it would replace all burned-out globes, and clean and keep its fixtures in repair until all deferred payments upon such fixtures had been completed;
- (g) Falsely represented that the fixture would be installed on trial for two weeks and would be removed at the request of the customer if it did not