

Complaint

11 F. T. C.

IN THE MATTER OF

JAMES A. McCAFFERTY SONS MANUFACTURING
COMPANY, INCORPORATEDCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 1165. Complaint, Apr. 24, 1924—Decision, June 30, 1927*

Where a corporation engaged in the manufacture and sale of paints and paint products, including a product containing not more than three per cent of carbonate of lead or sulphate of lead, mixed with other ingredients; designated, branded and labeled said product "GOLD SEAL Combination WHITE LEAD"; with the effect of misleading and deceiving the purchasing public into believing the same to be composed of a mixture containing not less than fifty per cent of white lead by weight, and of placing in the hands of retail dealers a means of so misleading and deceiving the public, and with the effect of diverting trade from and otherwise injuring both competitors engaged in the sale of products composed of carbonate of lead or sulphate of lead ground in linseed oil, and by them properly designated and described as "White Lead", and competitors engaged in the sale of products containing only a small percentage of the aforesaid first named ingredients, without designating or describing the same as "White Lead" or "Combination White Lead":

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

Mr. Robert O. Brownell for the Commission.

Fitzgerald, Stapleton & Mahon, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the manufacture of paints and paint products and ingredients, and in the sale thereof to wholesale and retail dealers in the various States, and with principal office and place of business in New York City, with naming product misleadingly and misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent named, branded and labeled a product containing not more than three per cent of sulphate of lead or carbonate of lead "Gold Seal Combination White Lead", with the capacity and tendency to mislead and deceive the trade and public into believing that sulphate of lead or carbonate of lead, understood by the trade and public through common usage as being designated by the term

"White Lead", was the predominant or principal ingredient in said product and to cause the purchase thereof in such belief, all to the prejudice of the public and respondent's competitors, a number of whom, as manufacturers and distributors, do not misbrand or falsely label as white lead their "white lead compound product containing small proportions of sulphate of lead or carbonate of lead", and a number of whom label, brand, advertise and sell as "white lead", products containing "sulphate of lead or carbonate of lead as the predominant or principal ingredient."

Upon the foregoing complaint, the Commission made the following

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, James A. McCafferty Sons Manufacturing Co., Inc., a corporation organized under the laws of the State of New York, 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 said 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, James A. McCafferty Sons Manufacturing Co., Inc., is a corporation organized under the laws of the State of New York, with its principal office and place of business in the City of New York in said State. It is now and for many years has been engaged in the manufacture of paints and paint products and ingredients, and the sale thereof to wholesale and retail dealers located at points in various States of the United States. It causes its said products, when so sold, to be transported from its said principal place of business in the City and State of New York, into and through other States of the United States to said purchasers at their respective locations. In the course and conduct of its said business, respondent has been for many years and now is in competition with

Findings

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other corporations, partnerships, and individuals who are also engaged in the sale and distribution of paints and paint products and ingredients in interstate commerce.

PAR. 2. Among the products which are manufactured by respondent in the regular course of its business is one which it designates, brands and labels as "Gold Seal Combination White Lead," the word "Combination" being in smaller letters than the other words in the label. It is composed of not more than three per cent of carbonate of lead or sulphate of lead mixed with other ingredients. Respondent sold and sells this product in the regular course of its business, as described in paragraph 1 of these findings, to wholesale and retail dealers located in different States of the United States, and it is by them resold to the purchasing public.

PAR. 3. The term "White Lead" is commonly understood by the trade and by the purchasing public to mean either carbonate of lead or sulphate of lead ground in linseed oil, without any other ingredients. The term "Combination White Lead" is understood by the trade and by the purchasing public to mean a mixture of white lead with other ingredients in which mixture the white lead is not less than fifty per cent of the total by weight.

PAR. 4. The use by respondent of the name "Gold Seal Combination White Lead", as set out in paragraph 2 hereof, has the capacity and tendency to mislead and deceive the purchasing public and part of the trade into the belief that respondent's product is composed of a mixture of white lead with other ingredients, in which mixture the white lead is not less than fifty per cent of the total by weight, and does so mislead and deceive the purchasing public; and places in the hands of retail dealers a means of so misleading and deceiving the public.

PAR. 5. There are among the competitors of respondent mentioned in paragraph 1 of these findings many who sell and distribute in interstate commerce products composed of carbonate of lead or sulphate of lead ground in linseed oil, and who properly designate and describe such products as "white lead". There are others among said competitors who sell and distribute in interstate commerce products which contain small percentages of carbonate of lead or sulphate of lead, and who do not designate or describe said products as "white lead" or "combination white lead". The acts and practices of respondent as set out in paragraph 2 of these findings have the capacity and tendency to and do divert trade from and otherwise injure its said competitors.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors, and 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."

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 an agreed statement of the facts, and the Commission having made its findings as to the facts and its conclusion that 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 the respondent, James A. McCafferty Sons Manufacturing Co., Inc., its officers, agents, servants, and employees, do cease and desist from:

(1) Designating or describing any product sold or offered for sale by it in interstate commerce, by means of brands, labels, or otherwise, containing the terms "Gold Seal Combination White Lead" or "Combination White Lead," unless the product so designated or described actually contains carbonate of lead or sulphate of lead as its principal and predominant ingredient to the extent of not less than fifty per cent by weight of the product; or

(2) Using or making any other representation, oral or written, as to any product sold by it in interstate commerce, which falsely represents the relative proportion of carbonate of lead or sulphate of lead contained in said product.

It is further ordered, That the said respondent shall, within 30 days from the receipt of this order, file with the Commission a report in writing setting forth the manner and form in which it has complied with this order, and shall attach to said report two copies of any new form of label which it may have adopted in such compliance.

IN THE MATTER OF
HOBART BRADSTREET, INC., KLING-GIBSON COMPANY
AND WILLIAM R. DURGIN

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1394. Complaint, Ju'y 20, 1926—Decision, June 30, 1927

Where a corporation engaged in the sale of courses of instruction in gymnastics and physical exercises by mail, including a course designated by it as "Spine Motion"; in advertising said course in well-known periodicals and publications of general circulation throughout the United States (and originally and prior thereto, in conjunction with an advertising agency and its chief copy writer, until the severance of business relations between them by said agency),

- (a) Reproduced two pictures of the same man over the legends, respectively, "Before taking * * * Spine Motion" and "* * * after taking Spine Motion just five weeks," the fact being that the subject of the pictures, taken only a few minutes apart, was a professional model or poser and that the difference in appearance was due to the use of light extremes and retouching, and not to said "Spine Motion";
- (b) Reproduced a picture of a white haired, dignified appearing man of advanced age on whose shoulder leaned a young woman, over the caption "Bride and Groom," together with statements to the effect that the "Groom" in the picture had, through the use of "Spine Motion," advanced in less than a year from a condition in which "he had become a mere spectator in life's race" to one of "almost youthful energy," "on the rise ever since," and to entering into a happy marriage with the youthful "Bride," under 20, therein depicted, the fact being that the pretended "Bride" was a professional model and the pretended "Groom" was not the personage he was therein represented as being, but a jewelry salesman employed at times as a model, who had never purchased or used "Spine Motion";

With the capacity and tendency to deceive the purchasing public, and induce the purchase of the course in question in reliance upon the truth and good faith of the aforesaid advertisements:

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

Mr. Alfred M. Craven for the Commission.

Winston, Strawn & Shaw of Chicago, Ill., for respondent Hobart Bradstreet, Inc.

Kirkland, Patterson & Fleming of Chicago, Ill., and *Mr. Vernon W. Van Fleet*, of Washington, D. C., for respondents Kling-Gibson Co. and William R. Durgin.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission