

Complaint

11 F. T. C.

IN THE MATTER OF

C. A. LEITCH MANUFACTURING COMPANY

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

Docket 1386. Complaint, May 13, 1926—Decision, Sept. 26, 1927

Where the words "Natural Lake Asphalt" had for many years come to signify and to be understood by the purchasing public as meaning natural asphalt obtained from Trinidad Lake in the British West Indies; and thereafter a corporation engaged in the manufacture of a roofing paint or "fluid cement," containing no Natural Lake Asphalt, and in the sale thereof, labeled its said product as "prepared from a mixture of Natural Lake Asphalt and Gilsonite Asphalt * * *," with the capacity and tendency to mislead and deceive the purchasing public in respect of the composition thereof, and thereby to divert trade from competitors truthfully representing their products:

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

Mr. Alfred M. Craven for the Commission.

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 Jersey corporation, engaged in the manufacture and sale of roofing paint and other roofing materials, with factory and principal place of business at Lincoln, N. J., with misrepresenting product, 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 falsely described and offered a so-called fluid cement made by it for roofing purposes, as and for a composition of natural or Trinidad Lake asphalt and Gilsonite, with other substances, and falsely so labeled the containers thereof in which it delivered the same to its purchasers, and, when so requested, to the customers of said purchasers, who in turn so advertised, described, designated, offered, and sold the same, with the capacity and tendency to mislead and deceive and with the effect of misleading and deceiving a portion of the purchasing public into believing the product in question to consist of material of higher quality and greater value than the actual ingredients, i. e., that it consisted of the "Natural Asphalt" obtained from Trini-

dad Lake, British West Indies, long identified by the purchasing public by the words "Natural Asphalt" or "Trinidad Asphalt", and Gilsonite asphalt, from a natural deposit in the State of Utah, both generally known as superior in quality and value to artificial asphalt, and with the capacity and tendency to divert and with the effect of diverting trade from competitors dealing in roofing paint and other roofing material containing natural or Trinidad Lake asphalt or Gilsonite or both, correctly described, and from those dealing in such materials containing neither; all to the injury and prejudice of the public and respondent's competitors.

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, 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, C. A. Leitch Manufacturing Co., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of section 5 of said act of Congress.

Respondent having entered its appearance and filed its answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and on behalf of respondent before an examiner of the Federal Trade Commission theretofore duly appointed.

The respondent having waived filing of brief and oral argument, 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 C. A. Leitch Manufacturing Co. is and since 1919 has been a corporation organized, existing and doing business under the laws of the State of New Jersey, with its factory and principal place of business at Lincoln in said State and with an office in the City of New York, State of New York. The respondent is engaged and since its incorporation has been engaged in the manufacture of roofing paint, also called "Fluid Cement", and in the sale and distribution of same from its factory in the State of New Jersey in interstate commerce to purchasers in various other States of the United States.

Order

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In the course and conduct of its business respondent is and has been in competition with many other individuals, partnerships and corporations likewise engaged in the manufacture of roofing paint and the distribution thereof in interstate commerce throughout the various States of the United States.

PAR. 2. Respondent for several years last past has placed and does now place upon the containers, in which its roofing paint or fluid cement is packed, shipped and delivered to its customers, labels upon which appear as descriptive of the contents of the containers the following statement:

Prepared from a Mixture of Natural Lake Asphalt and Gilsonite. Asphalt combined with other resisting gums and oils and a long staple asbestos fiber.

PAR. 3. The roofing paint or fluid cement thus advertised, labeled and described and sold by respondent as above set forth contains no Natural Lake Asphalt, and has never since the year 1922 contained any Natural Lake Asphalt. Natural Lake Asphalt is a brown to black solid bituminous substance obtained in its natural state from Trinidad Lake in the British West Indies, and the words "Natural Lake Asphalt" for many years have signified and have been understood by the purchasing public to mean the natural asphalt obtained from said Trinidad Lake.

PAR. 4. The representation and description of its roofing paint or fluid cement by respondent as set forth in paragraph 2 hereof is false and misleading and has the capacity and tendency to mislead and deceive the purchasing public into the belief that the said roofing paint or fluid cement contains Trinidad Lake Asphalt when such is not the fact, and thus to divert trade from respondent's competitors truthfully representing their products.

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 respondent and the evidence introduced, 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 the respondent C. A. Leitch Manufacturing Co., its officers, agents, and employees do cease and desist from representing by means of labels, or by any other means whatever, that roofing paint or fluid cement, or any other article offered for sale by it, contains as an ingredient Trinidad Lake Asphalt or Natural Lake Asphalt; unless such roofing paint, fluid cement or other article does actually contain in substantial amount Trinidad Lake Asphalt.

It is further ordered, That the respondent, C. A. Leitch Manufacturing Co., shall within 30 days after 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 to cease and desist hereinbefore set forth.

IN THE MATTER OF
**FRANK P. SNYDER, TRADING UNDER THE NAME AND
STYLE OF ALWAYS READY PRODUCTS COMPANY**

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

Docket 1477. Complaint, July 27, 1927—Decision, Oct. 15, 1927

Where an individual engaged in producing a solution for use in electric storage batteries, and in the sale thereof to wholesale and retail dealers, purchasers, and members of the consuming public; in advertising the same,

- (a) Represented and stated that it (1) would instantly charge batteries, would do so in from 20 to 40 minutes, and without the induction of current from any other source, and when the batteries were "dead"; (2) would not injure, overheat or overcharge the battery or freeze; (3) would not rot or harm the separators thereof, but would keep the plates free from sulphation; (4) contained less sulphuric acid than other solutions on the market and in common use and caused less deterioration; and (5) in the foregoing and in other respects was superior to other solutions, the fact being that the solution in question would not charge batteries instantly, or at all without the induction of current from some other source, would freeze at temperatures frequently prevailing in various parts of the United States during the winter months, contained substantially the same amount and proportion of sulphuric acid as other solutions on the market and in common use, and in other respects produced results not substantially different from those of the other solutions;
- (b) Made such statements in circulars, leaflets, and printed matter describing said solution and distributed by him to wholesale and retail dealers and members of the consuming public as "Always-Ready battery solution solves the problem because it is easy to use and comes ready for instant service. No longer is it necessary to charge a battery for two to four days on a line. * * * The modern battery Fluid. New life for your battery. Charges batteries quickly. No more long charging on the line", "Always Ready amazes automotive America. Charges batteries while you wait", "Remove battery from car, turn it upside down so as to empty all the liquid it contains. It is not necessary, but we advise washing the battery out with distilled water. Refill with 'Always Ready' so that the plates are completely covered, let stand for ten minutes and if the plates are in even fair condition, the battery will be fully charged", "Frequently Always Ready will completely charge a battery before you actually get it back into the car and wired up";

With the capacity and tendency to mislead and deceive purchasers and dealers and cause the same and members of the consuming public to purchase the solution in question in reliance upon the truth of the foregoing statements and representations, and with the effect of diverting business from and otherwise injuring competitors who do not misrepresent the nature, effect, or ingredients of their solutions;