

IN THE MATTER OF
GEORGE M. RUBINOW, AN INDIVIDUAL DOING BUSI-
NESS UNDER THE TRADE NAME AND STYLE OF
RUBINOW EDGE TOOL WORKS

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

Docket 1342. Complaint, May 4, 1926.—Decision, May 1, 1929

Where an individual engaged in the manufacture of hammers, hatchets, axes, and similar hand tools of malleable iron, and in the sale thereof to wholesale dealers, described said tools in catalogues and other trade literature as "Warranted Cast Steel" and "Cast Steel" and so labeled and sold the same to customer dealers, by whom said tools were designated as "steel" in catalogues to customers, and sold thus labeled to the purchasing public; with the effect of misleading and deceiving the trade and consuming public into believing the metal parts thereof to be composed of steel, with its recognized different characteristics and understood greater tool value, and with the capacity and tendency so to do and to induce the purchase thereof in such belief, and with the result of placing in the hands of others the means of consummating a fraud through such use of the aforesaid designations, and of diverting business from and otherwise injuring and prejudicing competitors dealing in products the metal parts of which are steel, and those dealing in products of which said parts are not so composed, and with the tendency so to do:

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

Mr. William A. Sweet 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 individual, engaged at Newark, N. J., in the manufacture and sale of tools, with misbranding or mislabeling and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, for about five years last past has conspicuously labeled certain tools made by him and containing no steel but composed, as to the metal parts thereof, of metal other than steel, with various legends and statements containing the words "Steel," including such legends and statements as "Cast Steel," "All Steel" and "New Process Converted Steel," and sells said tools so labeled to wholesalers, by whom the same are sold, thus labeled, to retailers in various States, and, by said retailers, still

thus labeled, to the consuming public, and further, in his advertisements in trade journals of general circulation among the hardware and allied trades throughout the United States and certain sections thereof and in catalogues, price lists, pamphlets, leaflets, and other trade literature distributed among wholesale and retail dealers and the consuming public, sets forth many false and misleading statements and representations to the effect that his said tools are made of "Cast Steel," "All Steel," and "New Process Converted Steel," and others of similar import.

The use by respondent, as charged, of said legends and statements, and such false and misleading statements and representations by him, as above set forth, "have the capacity and tendency to and do cause many wholesale and retail dealers and many of the consuming public to purchase respondent's said tools in the belief that the metal parts thereof are composed of steel," and such acts and practices tend to divert business from and otherwise to injure and prejudice competitors, many of whom sell tools, the metal parts of which are composed of steel, and who rightfully and lawfully so represent, and others of whom sell tools, the metal parts of which are not steel, but other metal, and who in nowise misrepresent such parts of their tools as steel; all to the prejudice of the public and of 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 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, George M. Rubinow, charging him with the use of unfair methods of competition in commerce in violation of the provisions of the said act.

The respondent, having filed his answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and of the respondent before an examiner of the Federal Trade Commission duly appointed. Briefs were filed and oral arguments made on behalf of the Commission and of the respondent.

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. The respondent, George M. Rubinow, is, and has been for more than five years prior to the date of the service of the

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complaint herein, an individual doing business under the trade name and style of Rubinow Edge Tool Works with his principal place of business in the city of Newark, in the State of New Jersey.

PAR. 2. The respondent is, and has been during the times above mentioned, engaged in the business of manufacturing various hand tools, such as hammers, hatchets, axes, and similar tools, and in the sale thereof to wholesale dealers therein located in various States of the United States, other than the State of New Jersey, and in foreign countries, and has caused and still causes his said tools when so sold by him to be transported, in commerce, from his said place of business in the city of Newark, N. J., to, into and through said other States and to foreign countries to the purchasers thereof, wholesale dealers therein, located in said other States and foreign countries.

PAR. 3. During the times above mentioned, other individuals, firms, and corporations, located in various States of the United States, have been engaged in the manufacture of various hand tools, such as hammers, hatchets, axes, and similar tools, which they have sold and delivered and still sell and deliver to dealers therein, located in various States of the United States. The respondent, during the times aforesaid, was, and still is, in competition in commerce in the sale of his said tools with said other individuals, firms, and corporations.

PAR. 4. The respondent buys the metal parts of his said tools in the forms of rough castings in the desired shapes. These castings are composed of malleable iron. In the process of the manufacture of his tools by respondent, these castings are first ground and the edges of the hatchets and axes are sharpened. The edges of the hatchets and axes and the heads of the hammers are then tempered by heating them in molten lead to a temperature of from 1,500° to 1,600° for from five to ten minutes and then cooling them in oil. The respondent completes the tools by putting in the handles and polishing the metal parts.

PAR. 5. Steel and malleable iron are distinct and separate commercial products and are produced by different processes. The trade and purchasing public recognize a distinction between steel and malleable iron and understand that tools made from steel have different characteristics and are better and more serviceable and valuable than tools made from malleable iron.

Malleable iron is produced by subjecting cast-iron castings to an annealing process, which changes the carbon in the cast iron from the combined form to the graphitic form; distributes said carbon in small nodules throughout the structure; and makes the brittle cast iron comparatively ductile. The carbon content of malleable iron is high and almost entirely in the graphitic form. Malleable iron is

brittle; will not retain a cutting edge when used for edged tools, and will readily chip.

Steel is produced generally by the Bessemer, crucible, open hearth, or electrical processes. These processes are refining processes, which burn out the impurities in the original pig iron, the product resulting from smelting the iron ore, reduce the carbon content, leave the carbon in the resulting metal almost wholly in the combined form, and produce a finished product which is initially malleable. Cast iron, the basis from which malleable iron is produced, is not formed during the processes for producing steel. The carbon content of steel is lower than the carbon content of malleable iron and is wholly in the combined form, that is to say, the carbon in the metal is combined with the ferrite and is not distributed throughout the structure in the form of small nodules of graphite. Steel is tough, will retain a cutting edge when used for edged tools, and will not readily chip.

The material in the metal parts of respondent's tools has the qualities and characteristics of malleable iron and not those of steel. It is high in carbon content, almost all of which is in the graphitic form; it is very brittle; will not retain a cutting edge; and will chip readily. These qualities and characteristics are typical of malleable iron and not of steel. The rough castings from which respondent's tools are made are composed of malleable iron and the tempering process to which the respondent subjects the rough malleable iron castings as described in paragraph 4 hereof, does not change the malleable iron of which they are composed to steel. The metal parts of respondent's said tools are composed of malleable iron and not of steel.

PAR. 6. In connection with the sale of his said tools, respondent has caused, and still causes, descriptions of the same, containing the words and phrases "Empire—These Hatchets are Warranted Cast Steel," "Warranted Cast Steel," and "Cast Steel," to be inserted in catalogues and other trade literature issued by him and distributed among his customers and prospective customers. Respondent's customers in turn issue and distribute to their customers catalogues in which they use the word "Steel" to describe and designate tools purchased from respondent. The respondent uses the word "Steel" in and upon labels, which he affixes to his said tools, and with said labels so affixed, sells and delivers said tools to his customers, who in turn sell said tools so labeled to the purchasing public. The respondent has thus placed in the hands of others the means of consummating a fraud.

PAR. 7. The use by the respondent of the word "Steel" in catalogues, circulars, or other advertising matter, or as a trade brand

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or designation upon labels affixed to his said tools as hereinbefore set forth, has the capacity and tendency to and does mislead and deceive the trade and consuming public into the belief that the metal parts of said tools are composed of steel and to cause the trade and purchasing public to purchase respondent's said tools in that belief.

PAR. 8. There are among the competitors of respondent referred to herein those who sell hammers, hatchets, axes, and similar tools, the metal parts of which are composed of steel. There are others of said competitors who sell tools, the metal parts of which are not composed of steel and are composed of a metal other than steel, and respondent's acts and practices as hereinbefore set forth tend to and do divert business from and otherwise injure and prejudice such competitors.

CONCLUSION

The acts and practices of the respondent set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce in 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 upon the answer of the respondent filed herein, 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, George M. Rubinow, his agents, representatives and employees, cease and desist:

From the use of the words "Cast Steel" or the word "Steel" in the designation of, or in the advertising, branding, labeling, or description of tools offered for sale or sold in interstate or foreign commerce, unless the metal parts of tools so designated, labeled and described are composed of steel.

It is further ordered, That the respondent, George M. Rubinow, shall within 60 days after the service upon him of this order file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which he has complied with the above order to cease and desist.

Syllabus

IN THE MATTER OF
WEST COAST THEATRES, INC., ET AL.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 1319. Complaint, May 29, 1925—Decision, May 8, 1929

Where a corporation engaged in the business of owning, leasing, and operating motion picture theatres in certain towns and cities, owning or controlling more than 100 theatres in the southern portion of the State concerned, and strongly interested and in a position of power, through exclusive franchise rights and otherwise, in distribution and production of pictures as well as exhibition thereof, and dominating, if not monopolizing, the motion picture theatre business in the territory concerned (and especially in the first run theatre field), through (1) construction of theatres, purchase thereof or interests therein, induced by threats of competitive construction or otherwise, (2) contracts apportioning territory or otherwise frankly restricting or precluding competition, and (3) affiliations and arrangements with others in the industry; and other concerns and individuals engaged therein and associated with it through stock ownership, agreements, or other community of interest; in pursuance of a combination and conspiracy to prevent and restrain producers and distributors of motion pictures in other States from leasing their films to exhibitor competitors and from shipping the same into the State in question and delivering them to such competitors, and to restrain and prevent competition among themselves and with other exhibitors in said State, in negotiating for and leasing films to be shipped from other States and delivered to such exhibitors,

- (a) Compelled motion picture producers and distributors, by withholding patronage and threats thereof, to—
- (1) Discontinue dealing with their exhibitor competitors and to furnish films to theatres owned or controlled by them at competitive points;
 - (2) Withhold certain pictures from said competitors, with the intent and effect to preventing such competitors from obtaining an adequate and necessary supply of suitable films for the operation of theatres in competition with them;
 - (3) Refrain from leasing to competing theatres for subsequent runs, films theretofore previously displayed in their own theatres, until after the lapse of so long a period that said films had become practically valueless for exhibition purposes; and
 - (4) Lease films to them at prices substantially lower than competitors would have been willing to pay therefor if given a contemporaneous opportunity to lease the same; and
- (b) Leased more films for certain of their theatres in competition with independent exhibitors, than could be exhibited therein, with the intent and effect of preventing the competitors concerned from securing a supply of films for their theatres;