

Complaint

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IN THE MATTER OF
GRAHAM GRISWOLD, DOING BUSINESS AS THE
GRISWOLD LUMBER CO.

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

Docket 1606. Complaint, Apr. 23, 1929—Decision, Sept. 23, 1929

Where an individual engaged in the wholesale lumber business,

- (a) Delivered to customers lumber caused by him to be scant sawn, in fulfillment of orders for rough lumber to be cut and milled to specified larger sizes and dimensions; and
- (b) Charged said customers the considerably higher amounts which would in fact have accrued and been properly payable for freight had said individual caused such lumber to be cut, milled, and delivered as ordered by said customers;

With the result that ability of competitors who filled orders with specified sizes and dimensions and collected only the true and actual freight charges for the transportation thereof, to compete with said individual and secure and hold customers for rough lumber in the various States was impaired and dangerously hampered, and trade tended to be and was unfairly diverted therefrom, wholesalers and retailers were misled into buying and accepting rough lumber of smaller sizes and dimensions than ordered, and buildings, bridges, and other structures were constructed of timbers and lumber of less strength than intended and required by specifications of dealers and architects; to the injury and prejudice of said competitors and of the public:

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

Mr. Ellis DeBruler for the Commission.

Mr. James W. Crawford, of Portland, Oreg., 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 individual, engaged in the operation of a wholesale business at Portland, Oreg., with making and collecting full measure charges for short measure shipments, 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 sales agent for certain corporations engaged in lumber milling, and, in some cases affiliated with him, for three years last past (1) caused orders received by him for rough lumber, for milling to certain sizes and dimensions, to be milled scant sawn, i. e., at smaller dimensions than specified by the customers, and to be transported thereto as conforming to specified

sizes, and (2) billed and collected from said customers freight charges exceeding those actually paid by him, namely, the approximate freight charges which would have been paid for the transportation of lumber cut to the full sizes and dimensions specified by the customers in their orders.

Such methods and practices, as alleged, "are to the detriment of the public requiring and using rough lumber in that wholesale and retail buyers of rough lumber have been and are in many certain instances deceived into buying and accepting rough lumber of lesser sizes and dimensions than ordered and desired by them," and also "in that in some instances buildings, bridges, and other structures are, as the result of the said described methods of competition, constructed of timbers and other lumber of less strength than intended and required by dealers' and architects' specifications," and said methods and practices, further, as charged, lessen, impair, and hinder the ability to complete and hold customers of competitors who do not pursue such methods of competition but sell rough lumber of the sizes and dimensions ordered, and collect from their customers "the true and actual freight charges for the transportation" thereof; all to the 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, the Federal Trade Commission issued and served a complaint upon the respondent, Graham Griswold, doing business as the Griswold Lumber Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent filed his answer to said complaint and stated that he refrained from contesting the proceeding and consented that the Commission make, enter, and serve upon him an order to cease and desist from the alleged violation of the law as set forth in the complaint, and then followed, in the answer, a practical denial of all of the principal allegations of the complaint; but thereafter, upon application of said respondent, said answer was withdrawn and the files and record in this matter show that said respondent refrains from contesting this proceeding and consents that the Commission may make, enter, and serve upon him an order to cease and desist from the violation of the law as alleged in the complaint in this matter.

Thereupon this proceeding came on for decision and the Commission having duly considered the record, and now being fully advised

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in the premises, makes this its report, stating its findings as to the facts and conclusion drawn therefrom, and finds that the allegations of the complaint herein are true, and also that the following is a true statement of the facts herein, based upon the record:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Graham Griswold, doing business as the Griswold Lumber Co., is the owner and active manager of an unincorporated wholesale lumber business, having his place of business at Portland, Oreg., and which business is operated under the registered trade name of the Griswold Lumber Co.

PAR. 2. The respondent, in the conduct of his wholesale lumber business, acts as the sales agent for certain corporations engaged in lumber milling in the State of Oregon, some of which are affiliated with said Griswold Lumber Co., and in his capacity as sales agent said respondent solicits sales of lumber and sells the same and causes such lumber to be transported from the State of Oregon to purchasers and consignees thereof located in Illinois, Missouri, Colorado, Kansas, Iowa, and other States, and has been doing the same for at least three years last past.

PAR. 3. Said respondent, in the course and conduct of his said wholesale lumber business, in interstate commerce, and for the past three years, has from time to time received orders for rough lumber to be cut and milled to certain sizes and dimensions named and specified by his customers, and respondent has thereupon ordered from lumber milling corporations, which are closely affiliated with said respondent, and also other milling concerns, rough lumber to be cut and milled scant-sawn, or at sizes and dimensions less than the dimensions named and specified by his customers. Thereafter, the said scant-sawn rough lumber was transported by said respondent to his customers as conforming to and actually being of the sizes and dimensions by them respectively specified in their orders.

Said respondent has then billed to and collected from his customers as freight charges amounts in excess of those actually paid by him to transportation companies for the lumber or timber actually shipped by him to his various customers. The freight charges which were included in respondent's invoices to his customers, and actually collected from them were always approximately the amount which would have been paid to the transportation companies for the transportation of the said lumber had the same been cut to the full and actual sizes and dimensions named and specified by the customers of said respondent in their respective orders, but the amount of freight

actually paid by respondent was based on the delivered scant-sawn lumber and timber, and considerably less than the amount collected from customers.

The amounts so billed by respondent and collected from his various customers were considerably in excess of the amount of freight that respondent actually paid for the transportation of the said lumber and timber, which said lumber and timber in each instance was cut under the size specified by respondent's said customers, and the actual freight paid was paid on the basis of the size of the lumber and timber as actually cut, but the actual freight collected by respondent from his customers was in each instance considerably in excess of the amount of freight that respondent paid for the transportation of the lumber and timber in the filling of orders.

PAR. 4. There are other individuals and corporations in the State of Oregon and many other States engaged in selling rough lumber at wholesale, having customers located in States other than the States of production, who have not pursued and who do not pursue the methods of competition which are pursued by respondent. There are many of respondent's competitors who do not receive orders for rough lumber to be filled to certain sizes and dimensions named and specified and then fill such orders from lumber which is cut and milled at sizes and dimensions less than those named and specified by their respective customers, but his said competitors sell rough lumber of the actual sizes and dimensions ordered and only collect from their customers the true and actual freight charges for the transportation of such lumber to their respective customers, and whose ability to compete with respondent and secure and hold customers in the various States for rough lumber is and has been lessened, impaired and dangerously hampered by the methods of competition pursued by respondent in filling orders for lumber and timber with lumber and timber cut scant or cut much lower than specified in the orders, and charging and collecting for lumber and timber that was presumed to be cut to the full size specified.

PAR. 5. The Commission further finds as a fact that the methods of competition and practices of respondent in filling orders for rough lumber, to be milled to certain sizes and dimensions specified by respondent's customers, by filling such orders by delivering lumber and timber of sizes and dimensions less than those named and specified by his respective customers, and thereafter billing and collecting from his said customers as freight charges amounts considerably in excess of those actually paid by him to transportation companies for the lumber shipped by him to his respective customers, when his competitors do not follow such methods but actually fill

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orders for lumber as specified and who pay freight on the basis of lumber and timber cut and milled to dimensions ordered and specified, are detrimental to his competitors and place them at a disadvantage in competing with him, and the methods of respondent are also further to the detriment of the public requiring and using rough lumber, in that wholesale and retail buyers of rough lumber have been and are in many instances deceived into buying and accepting rough lumber of lesser sizes and dimensions than ordered and described by them. Moreover, the interests of the public are prejudiced and injured by the said described methods of competition and practices of respondent in filling orders with scant-sawn lumber, as hereinbefore set out, in that, in some instances, buildings, bridges, and other structures are, as the result of such described methods of competition, constructed of timbers and other lumber of less strength than intended and required by dealers' and architects' specifications.

CONCLUSION

By reason of the aforesaid acts and practices of the respondent, as hereinabove set out, it is concluded by the Commission that the acts and practices of respondent are clearly unfair methods of competition in interstate commerce, and that such practices do have the tendency to and actually have the effect of unfairly diverting trade from respondent's competitors, and that the acts and things hereinabove set out are to the prejudice and injury of the public, and that such acts constitute unfair methods of competition in interstate commerce in 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 ¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and upon the consent of respondent that the Commission may make, enter, and serve upon him an order to cease and desist from the violation of the law as alleged in the complaint in this matter, as fully appears from the record herein; and the Commission having made its findings as to the facts with the conclusion that the respondent has violated the provisions 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", and, further, the Com-

¹ Substitute order made as of Feb. 24, 1930.

mission having issued an order to cease and desist in terms broader than the allegations of the complaint, in this respect to wit, that the prohibitions of the said order purport to relate to lumber generally and to timber, whereas the complaint and the findings herein related to rough lumber only, as distinguished from surfaced lumber on the one hand and from timber on the other;

Now, therefore, it is hereby ordered, That the order to cease and desist heretofore, on the 23d day of September, 1929, made and entered, and thereafter served upon respondent, be and the same is hereby rescinded and revoked; and

It is further ordered, That respondent, Graham Griswold, doing business as the Griswold Lumber Co., his agents, representatives, servants, and employees, and all persons under his authority or direction, cease and desist, in the sale of lumber in interstate commerce, from the following unlawful practices:

(1) From filling orders for rough lumber which are received from his customers to be cut and milled to certain sizes and dimensions named and specified by said respondent's customers, and then and thereupon filling such orders by the delivery of scant-sawn lumber and lumber of sizes and dimensions less than those sizes and dimensions mentioned and specified by his said customers.

(2) From filling orders for rough lumber from customers to be cut and milled to certain sizes and dimensions named and specified by respondent's said customers, and then and thereupon filling such orders, in interstate commerce, by the delivery of scant-sawn rough lumber, and then charging to and collecting, or charging to or collecting, freight from his said customers in excess of the amount of freight actually paid by said respondent to the transportation companies for the lumber actually shipped to respondent's customers in filling such orders.

(3) From hereafter delivering rough lumber, in filling orders in interstate commerce, of less sizes or dimensions than those specified by respondent's customers, and also from hereafter charging to and collecting, or charging to or collecting, from customers freight charges in excess of amounts actually paid by respondent, and also from all similar unlawful or unfair practices in the sale of lumber in interstate commerce.

It is further ordered, That respondent, Graham Griswold, doing business as the Griswold Lumber Co., shall, within 30 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the substitute order to cease and desist hereinabove set out.

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IN THE MATTER OF

MAX KLEIN, DOING BUSINESS AS KLIMATE-PRUF
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 1579. Complaint, Mar. 14, 1929—Decision, Sept. 25, 1929

Where an individual engaged in the sale of waterproofing compounds, roof coatings, paints, and similar products, and neither owning, operating, nor controlling any mill or plant, nor engaged in manufacturing, but filling orders through a manufacturer by whom quantities called for were supplied from its regular line of products, packed in containers with labels furnished by said individual and featuring his trade name, and shipped, thus labeled, directly to said individual's purchaser customers; employed a trade name including the word "manufacturing" and featured and used said name in advertising matter distributed to customers and prospective customers in various States and on business stationery and circular letters, together with the representation that the commodity was "manufactured exclusively by the Klimate-Pruf Manufacturing Co.", and a depiction of said company's purported manufacturing plant and the words, in conspicuous type, "factory and warehouse, Kingsland, N. J.", with the tendency and capacity to mislead and deceive the purchasing public into believing him to be a manufacturer and that purchasers from him were buying directly from the manufacturer and thereby saving themselves the middleman's profit:

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

Mr. William T. Kelley for the Commission.

Ruttenberg & Ruttenberg, 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, an individual engaged in the distribution and sale of waterproofing compounds, roof coating and paints to purchasers in States other than the State of New Jersey, where said products were manufactured, and with principal office and place of business in New York City, with using misleading trade name, misrepresenting business status or advantages, and advertising falsely or misleadingly in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.