

Complaint

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IN THE MATTER OF

MAX KLEIN, DOING BUSINESS AS KLIMATE-PRUF
MANUFACTURING COMPANYCOMPLAINT (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.

Respondent, as charged, engaged as above set forth and neither owning nor operating any factory making the products dealt in by him, but filling orders from products made in plants neither owned nor operated by him, has used and uses a trade name containing the word "manufacturing", in the sale and distribution of his products, together with the words "manufactured exclusively by" or the words "factory and warehouse, Kingsland, N. J.", or alone, or in connection or conjunction with a pictorial representation of a factory in its circulars and/or letterheads, invoices, etc.

Such statements and representations, pictorial or otherwise, as alleged, "have had and do have the tendency and capacity to deceive and mislead purchasers and prospective purchasers of its products into the belief that respondent was and is the manufacturer of the products so advertised and sold or distributed by him in commerce between and among certain States of the United States and thereby to divert trade from truthfully described products"; 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 Max Klein, doing business under the trade name and style Klimate-Pruf Manufacturing Co., hereinafter referred to as respondent, charging him with unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Thereupon the respondent entered his appearance and filed his answer to the complaint and formal hearing was had thereon before an examiner of the Commission theretofore duly appointed, and testimony, documentary evidence, and exhibits were offered and received, and duly recorded and filed in the office of the Commission; thereafter the proceedings regularly came on for hearing before the Federal Trade Commission on such complaint and answer, and on the testimony, evidence, and exhibits on file, and on the briefs of counsel, and the Federal Trade Commission duly considered the same, and now makes this report in writing and states its findings as to the facts, as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Max Klein, at the time of the issuance of the complaint herein, on March 14, 1929, and for more than two years prior thereto, was and now is engaged in the business of buying and selling waterproofing compounds, roof coatings, paints,

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and similar products, and carried on such business under the name and style Klimate-Pruf Manufacturing Co., with principal place of business in the city of New York, State of New York. The commodities so dealt in by respondent have been obtained by him through an arrangement with the Stanleen Manufacturing Co. from the M. J. Merkin Paint Co., Inc., a manufacturer of paints, varnishes, and allied products, with factory and principal place of business at Lyndhurst, in the State of New Jersey. The respondent caused such commodities when so sold to be transported to the respective purchasers thereof from Lyndhurst, in the State of New Jersey, through and into other States of the United States. In the course and conduct of his said business respondent at all times mentioned herein has been and is now in active competition with various corporations, partnerships, and other persons also engaged in the business of buying and selling waterproofing paints, roof coatings, paints, and similar products in commerce among the several States of the United States.

PAR. 2. The respondent, in the course of his business as set out in paragraph 1 hereof, has made use of advertising matter which he caused to be distributed among his customers and prospective customers in various States of the United States, in which the trade name under which he carried on business, viz, KLIMATE-PRUF MANUFACTURING Co., appeared in large display type and some of such advertising matter contained the representation that the commodity therein described was manufactured exclusively by the Klimate-Pruf Manufacturing Co. In the course of such business respondent has also made use of business stationery which featured the said trade name Klimate-Pruf Manufacturing Co. and has caused circular letters to be mailed to prospective customers in various States of the United States, which circulars were printed upon letterheads used by him in the course of such business, which letterheads had printed thereon in large display type the said trade name under which he carried on business, together with the words "factory and warehouse, Kingsland, N. J." Some of said advertising matter carrying the words "Klimate-Pruf Manufacturing Co.", distributed by respondent as aforesaid, contained pictorial representations of what purported to be a manufacturing plant operated by respondent.

PAR. 3. The respondent at no time during the course of his business carried on by him, as described in paragraphs 1 and 2 hereof, owned, operated, or controlled a mill, factory, or manufacturing plant, and was not engaged in the manufacture of any of the commodities dealt in by him or any other commodities, but at all times during the course of such business has had orders for such com-

modities taken by him from customers, transmitted through a jobber of paints, varnishes, and allied products to the M. J. Merkin Paint Co., Inc., a manufacturer of paints, varnishes, and allied products, of Lyndhurst, N. J., which orders were in all cases filled from the regular line of the products of said M. J. Merkin Paint Co., Inc., and the quantities so ordered were packed into containers and there were attached to such containers labels furnished by the respondent, which labels featured the trade name under which he carried on business, namely Klimate-Pruf Manufacturing Co., and the quantities so packed and labeled were then transported to the respective purchasers thereof.

PAR. 4. The use by respondent of the word "manufacturing" in his trade name Klimate-Pruf Manufacturing Co., and the use of the word "manufactured" in the phrase "manufactured exclusively by the Klimate-Pruf Manufacturing Co.", and the use of pictorial illustrations of what purported to be a manufacturing plant operated by respondent, and other similar statements and representations on letterheads, business stationery, and advertising matter in the manner and under the circumstances hereinbefore set out has the tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that respondent is a manufacturer of the commodities in which he deals and that persons who purchase from respondent are buying direct from the manufacturer and are thereby saving themselves the middleman's profit.

CONCLUSION

The practices of respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation 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, the answer of the respondent, and testimony and evidence submitted, the trial examiner's report upon the facts and the exceptions thereto, and the Commission having made its findings as to the facts with 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",

Order

It is now ordered, That the respondent Max Klein, individually, and trading under the name Klimate-Pruf Manufacturing Co., his agents, servants, representatives, and employees, cease and desist in connection with the sale and distribution of waterproofing compounds, roof coatings, paints, and similar products in interstate commerce:

(1) From conducting business under the name Klimate-Pruf Manufacturing Co., or under any other trade or corporate name containing the word "manufacturing."

(2) From using the phrases "manufactured exclusively by the Klimate-Pruf Manufacturing Co.", "factory and warehouse, Kingsland, N. J."; or any phrase, slogan, or pictorial representation of similar import; or any statement or representation whatsoever that respondent is the manufacturer of said commodities; or any statement or representation or pictorial representation importing or implying that respondent is selling and distributing said commodities direct from the manufacturer or factory to his customer purchasers without the intervention of middlemen.

It is further ordered, That respondent shall within 60 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 order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF
ROCKWOOD CORPORATION OF ST. LOUISCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1536. Complaint, Oct. 3, 1928—Decision, Oct. 14, 1929*

Where a corporation engaged in the manufacture and sale of building materials, which (1) were composed of some 80 per cent of calcined gypsum and from 1 to 2 per cent cottonwood fibre, with balance water of crystallization, (2) had the shape, but not the appearance, weight, or texture of lumber and were not lumber as long known and understood, i. e., wood from trees, trimmed as boards, etc., (3) were put in place with carpenters' tools and served to take the place of lumber, and (4) were sold in competition therewith and with gypsum blocks, clay tiles, building bricks, and other varieties of building materials, used the words "lumber" and "Rockwood lumber" in its description and advertisement of its aforesaid building materials, in pamphlets, leaflets, and other advertising, without explanatory qualifying word or words; with the capacity and tendency to mislead and deceive the public into believing said materials to be the product of the tree, to the prejudice of the public and its competitors:

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

Mr. Richard P. Whiteley for the Commission.

Mr. John H. Bruninga and *Mr. John H. Cassidy*, of St. Louis, Mo., 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 Missouri corporation engaged in the manufacture and sale of gypsum blocks for building purposes, and with principal place of business in St. Louis, with naming product misleadingly 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 in the sale of its aforesaid products, represented, designated, and described the same as "Rockwood lumber" or "Rockwood gypsum lumber", and in advertising the same in circulars distributed among various States, used such phrases as "Rockwood lumber is made of gypsum", "Rockwood lumber makes both the wall and the form for the concrete", and various other phrases containing the word "lumber", notwithstanding the