

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

Findings

13. F. T. C.

fact that the product in question "was not lumber, a material sawed or cut from trees or logs of wood into boards, planks, or timber, or other shapes generally understood and recognized by the purchasing public as and to be lumber".

Respondent further, as charged, designated and advertised its said product in circulars distributed by it in interstate commerce through such words and phrases as "Rockwood is fireproof", "The best sort of fire prevention is the construction of your entire building fireproof of Rockwood", "Fire can not steal upon you unheard and unseen in the middle of the night to destroy all in its path when you live in a home built of Rockwood", notwithstanding the fact the said product was neither fireproof nor "proof against disintegration caused by the application thereto of extreme heat, so as to be advertised and described properly and accurately as aforesaid".

The use by respondent of the words "lumber" or "fireproof", "either independently or in connection or conjunction with any other word or words", as above set forth, has had and has the capacity and tendency to mislead and deceive and confuse the purchasing public into believing the product in question, respectively, to be lumber, as above set forth, and to be fireproof so as to be properly and truthfully so advertised and described; 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 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, Rockwood Corporation of St. Louis, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

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

Whereupon, this proceeding came on for a final hearing on the briefs and oral argument, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Rockwood Corporation of St. Louis, is a corporation organized under the laws of the State of

Delaware, with its principle office in the city of St. Louis, State of Missouri, and its principle factory in the city of East St. Louis, State of Illinois.

PAR. 2. For several years, and at all times herein mentioned, respondent has been engaged in the manufacture of gypsum castings, consisting of sections for interior nonbearing partitions, for exterior walls and for floors, for use in the construction of buildings, and has caused said gypsum castings, when sold, to be transported from its factory located in the State of Illinois to purchasers located in other States of the United States, said purchasers being located principally in the State of Missouri. In the course and conduct of its said business, respondent at all times since its organization has been and now is in active competition with various persons, partnerships, and other corporations engaged in the manufacture and sale of lumber, gypsum blocks, clay tiles, building bricks, and other varieties of building materials, in commerce among several States of the United States.

PAR. 3. Respondent, in the course of its business as set out in paragraph 2 hereof, manufactures, sells, and causes to be transported building materials composed of from 1 to 2 per cent by weight of cottonwood fibre and of about 80 per cent by weight of calcined gypsum (calcium sulphate), the balance being water of crystallization. The building materials so produced and used as set out in paragraph 2 hereof are described and advertised by respondent by means of pamphlets, leaflets, and other forms of advertising matter, which respondent has caused to be distributed among customers and prospective customers in various States of the United States, as "Rockwood," "Rockwood lumber" and "Rockwood gypsum lumber." The advertising matter so distributed by respondent also contains the statement that said building material is made of gypsum and is fireproof.

PAR. 4. The Department of Commerce of the United States on July 1, 1925, issued a revised draft of a publication described as "Simplified Practice Recommendation No. 16", pursuant to the action of the conferences held, respectively, on December 12 and 13, 1923, April 22, 1924, and May 1, 1925, by representatives of manufacturers, distributors, wholesalers, retailers, and users of lumber and representatives of architects, engineers, and general contractors, which said publication contained recommendations concerning the classification, nomenclature, etc., of lumber. Said publication contained the following definition: "Lumber is the product of the saw

Order

13 F. T. C.

and planing mill, not further manufactured than by sawing, re-sawing, passing lengthwise through a standard planing mill, cross-cut to length and matched."

The building materials manufactured by respondent as described in paragraph 3 hereof have the contour shape of lumber and are put in place with carpenters' tools, such as the saw, plane, brace and bit, chisel, nails and hammer. Where they are used they take the place of lumber although they do not resemble lumber in appearance, weight, or texture.

PAR. 5. The word "lumber," when applied to building materials has been well known and understood by the public for a long period of years to mean wood sawed or cut from trees in various sizes and lengths and thereafter trimmed as boards, planks, or other dimensions. It is made wholly from the wood of the tree. Respondent's products made from gypsum are not lumber in the accepted sense and the use of the word "lumber" to describe them, unless qualified by the word "gypsum" or some equally explanatory word or words, has had and has the capacity and tendency to deceive the public into the mistaken belief that they are products of the tree.

CONCLUSION

The practices of the respondent, under the conditions and circumstances set forth in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a 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 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 above named, Rockwood Corporation of St. Louis, its officers, agents, representatives, and employees, do cease and desist from using the word "lumber"

and/or the words "Rockwood lumber" in catalogues, pamphlets or advertising matter used in the offering for sale or sale in interstate commerce of gypsum products or gypsum building materials unless and until the word "lumber" and/or the words "Rockwood lumber" are qualified by the use of the word "gypsum" or some other word or words equally explanatory in lettering equally as conspicuous as the word "lumber".

It is further ordered, That the respondent, Rockwood Corporation of St. Louis, shall, within 60 days after the service on it of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which it has complied with the above order to cease and desist.

Complaint

13 F. T. C.

IN THE MATTER OF
ROARING SPRING BLANK BOOK 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 1594. Complaint, Apr. 12, 1929—Decision, Nov. 9, 1929

Where a corporation engaged in the manufacture and sale of school supplies, including composition books marked by it with such legends as "200 Page Composition Book", "A. S. D. Special 240 Page", and "A. S. D. Special 60" to indicate the page content thereof, sold certain other of its said books marked with such legends as "100 Special Composition Book", "144 Special Composition Book", and "200 Special Composition Book", notwithstanding the fact that said books last referred to, respectively, contained less than the number of pages thus variously indicated, with the capacity and tendency to mislead and deceive a substantial part of the purchasing public into the erroneous belief that the same contained more pages than was actually the case and to induce the purchase thereof in such belief:

Held, That such practice, under the circumstances set forth, constituted an unfair method of competition.

Mr. Robert H. Winn 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 Pennsylvania corporation engaged in the manufacture of school supplies including composition books, and sale thereof among various States, and with principal or executive office in Roaring Spring, Pa., with 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, while marking certain of its products as "200 Page Composition Book", "A. S. D. Special 240 Pages", and "A. S. D. Special 60", it marked other books, containing fewer than the pages indicated, "100 Special Composition Book", "144 Special Composition Book", and "200 Special Composition Book", with the effect of misleading and deceiving the purchasing public as to the actual content of the aforesaid product and with the intent and capacity and tendency so to do and the effect of inducing the purchase of said books by such public in said belief, to the prejudice of the public and of respondent's competitors.