

Complaint

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IN THE MATTER OF

J. A. POWELL, TRADING AS J. A. POWELL 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 1762. Complaint, Feb. 17, 1930—Decision, May 6, 1930

Where an individual engaged in the sale of jewelry at wholesale; through catalogues, price lists, coupons, guarantees, and other advertising matter,

- (a) Falsely represented himself as an importer of synthetic and semi-precious stones;
- (b) Falsely represented certain stones as carbons in their crystalline state, through such words and phrases as "diamonds," "will stand the diamond test of beauty, fire, and acid," and "they can not be told from a genuine diamond," the facts being that the stones in question could not fairly and truthfully be described as diamonds;
- (c) Falsely represented certain imitation stones not commonly regarded by the public or trade as genuine jade, topaz, amethyst, sapphire, rubby, and emerald, as jade, topaz, etc., and certain ring cases not made in whole or in predominant part of the hide of an animal, as leather;
- (d) Falsely represented certain articles containing neither platinum nor gold and not engraved, as "platinum finish," "gold finish," and "engraved rings"; and
- (e) Supplied customers with coupons stating that for a limited time an "Egyptian diamond ring" of a value of \$5 would be sold for \$1, with a limit of two rings to a customer and that said coupon was worth \$1 to the ultimate purchaser and represented savings effected by not spending "fabulous sums in national publications," the facts being that the sale of said rings was not limited, the rings were not diamonds, wholesale cost thereof, was approximately 8½ cents, no savings in advertising costs were passed on to the ultimate purchaser, and the coupons had no substantial value to such purchaser;

With the capacity and tendency to mislead and deceive purchasers and prospective purchasers throughout the several States as to the quality, substance, source of origin, and value of the products in question;

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. P. B. Morehouse 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 in the wholesale jewelry business, and with principal office and place of business in Chicago, with mis-

representing business status 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, in his advertisements in catalogues, price lists, coupons, etc., represents himself as an importer of synthetic and semiprecious stones, the fact being he is not such an importer, and commodities dealt in by him are not imported.

Respondent, further, as charged, in his aforesaid advertisements, misrepresents various products dealt in by him as follows:

Certain stones as diamonds, through use of the word itself, and such words as "will stand the diamond test of beauty, fire, and acid," and "they can not be told from a genuine diamond." Such stones were not carbons in their crystalline state and could not fairly and truthfully be described as diamonds.

Imitation stones as jade, topaz, amethyst, sapphire, ruby, and emerald. Said stones are not commonly recognized by trade as genuine jade, etc.

Ring cases neither made in whole nor in predominant part of a hide of an animal as "leather."

Certain articles as "platinum finish," "gold finish," and "engraved rings." Said articles contained neither platinum nor gold and had not been subjected to the process ordinarily known and recognized as engraving.

Respondent, further, as charged, has furnished and furnishes purchasers reselling his jewelry, with means calculated and tending to deceive the purchasing public, through coupons stating that for a limited time an "Egyptian diamond ring" worth \$5 will be sold for \$1 with a limit of two rings to a customer, that the coupon is worth \$4 to the ultimate purchaser, and represents savings effected through not spending "fabulous sums in national publications."

The sale of said rings was not limited, the stones were not diamonds, coupons could be had for 50 cents a thousand, the wholesale cost of each ring was about 81 $\frac{1}{3}$ cents, and no savings in advertising were passed on to the ultimate purchaser.

According to the complaint "the foregoing statements, representations, and practices of the respondent and each of them have the capacity and tendency to mislead and deceive purchasers and prospective purchasers throughout the various States of the United States as to the quality, substance, and source of production as well as the value of the products advertised, offered for sale, and sold; and the aforesaid acts and things alleged to have been done by respondent are to the prejudice of the public and the competitors of

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the respondent, and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

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 a complaint upon the respondent, J. A. Powell, trading as J. A. Powell Co., charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered his appearance and filed his answer herein stating that he desired to waive hearing on the charges set forth in the complaint and not to contest the proceeding.

Thereupon this proceeding came on for a final hearing on the complaint and answer, and the Commission having duly considered the record and being fully advised in the premises, makes this its report, stating its findings as to the facts set forth in the complaint and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual doing business and trading under the name and style J. A. Powell Co., with principal office and place of business in the city of Chicago, State of Illinois. He is engaged in the wholesale jewelry business, selling, advertising, and offering for sale jewelry to purchasers and prospective purchasers located in the various States of the United States and causing said jewelry when so sold to be transported from his place of business in the city of Chicago and State of Illinois into and through other States of the United States to the purchasers thereof. In the course and conduct of his aforesaid business respondent is in competition with other individuals, partnerships, and corporations engaged in commerce between and among the various States of the United States.

PAR. 2. By the circulation and use of catalogues, price lists, coupons, guaranties, and other advertising matter respondent has represented and does represent to his purchasers and prospective purchasers in the various States of the United States that he is an importer of synthetic and semiprecious stones, whereas in truth and in fact respondent is not such an importer, and the commodity so offered and advertised for sale and sold is not imported.

PAR. 3. Respondent, through the use of the word "diamonds" and the words "will stand the diamond test of beauty, fire, and acid," and "they can not be told from a genuine diamond," in his catalogues, circulars, price lists, coupons, and advertising matter as aforesaid, has thereby represented and does represent to prospective purchasers and purchasers throughout the various States of the United States that the stones so offered for sale and sold are carbons in their crystalline state, whereas in truth and in fact the said stones so advertised, offered for sale, and sold are not genuine, are not carbons in their crystalline state, and can not fairly and truthfully be described as "diamonds."

PAR. 4. Respondent has advertised and is advertising, offering for sale, and selling to prospective purchasers and purchasers throughout the various States of the United States other imitation stones, represented and described as jade, topaz, amethyst, sapphire, ruby, and emerald, whereas in truth and in fact the said stones so advertised, offered for sale, and sold are not stones commonly recognized by the public or by the trade as genuine jade, topaz, amethyst, sapphire, ruby, and emerald.

PAR. 5. Respondent, by the advertising mediums aforesaid through the use of the word "leather" in connection with certain ring cases, has represented and does represent to prospective purchasers and purchasers throughout the various States of the United States that his said ring cases are made in whole or in predominant part of the hide of an animal, whereas in truth and in fact the said ring cases are made neither in whole nor in predominant part of any commodity commonly recognized or known to the public or the trade as leather.

PAR. 6. Respondent by means of his catalogues, price lists, coupons, guaranties, and other advertising matter through use of the words "platinum finish," "gold finish," and "engraved rings" has represented and does represent to purchasers and prospective purchasers through the various States of the United States that the articles so advertised for sale and sold contain some platinum, or some gold, or have been subjected to the process commonly known and recognized as engraving, whereas in truth and in fact none of such articles so advertised for sale or sold contain either platinum or gold or have been subjected to the process ordinarily known and recognized as engraving.

PAR. 7. Respondent has furnished and does furnish the purchasers who resell his jewelry with means calculated and tending to deceive the ultimate purchaser, which said means are coupons containing statements to the effect that for a limited time only an Egyptian

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diamond ring of a value of \$5 will be sold for \$1 with a limit of two rings to a customer; that said coupon is worth \$4 to the ultimate purchaser and that this coupon represents savings effected by not spending "fabulous sums in national publications," whereas in truth and in fact the sale of said rings was not limited, the rings were in no sense diamonds, the coupons have no substantial value to the ultimate purchaser, the wholesale cost of each ring was approximately $8\frac{1}{3}$ cents and no savings in advertising costs were passed on to the ultimate purchaser.

PAR. 8. The foregoing statements, representations, and practices of the respondent and each of them have the capacity and tendency to mislead and deceive purchasers and prospective purchasers throughout the various States of the United States as to the quality, substance, and source of production as well as the value of the products advertised, offered for sale, and sold by respondent.

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 of respondents' competitors, 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, the answer of the respondent, and agreed statement of facts, 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, J. A. Powell, trading as J. A. Powell Co., his agents and employees, with reference to all products and commodities sold and distributed by him in interstate commerce, do cease and desist:

1. From representing in connection with all synthetic and semi-precious stones or other jewelry which are not shipped from a point outside of the United States into the United States, and sold and

distributed by him, that he is an importer or that such stones are imported.

2. From the use of the word "diamonds" and the words "will stand a diamond test of beauty, fire, and acid", and the words "they can not be told from a genuine diamond" in the designation of or in the advertising, branding, or labeling of stones which are not carbons in their crystalline state and which can not be fairly and truthfully described as diamonds.

3. From the use of the words "jade", "topaz", "amethyst", "sapphire", "ruby", and "emerald" in the designation of or in the advertising, branding, or labeling of all jewelry or stones not commonly recognized by the public or by the trade as genuine jade, topaz, amethyst, sapphire, ruby, and emerald.

4. From the use of the word "leather" in the designation of or in the advertising, branding, or labeling of ring cases or other commodities not made of the hide of an animal.

5. From the use of the words "platinum finish", "gold finish", and "engraved" in the designation of or in the advertising, branding, or labeling of jewelry or other ware, containing no platinum, no gold, and which has not been subjected to the process commonly known and recognized as engraving.

6. From selling or distributing in connection with such jewelry, coupons containing statements to the effect that for a limited time only an Egyptian diamond ring of a value of \$5 will be sold for \$1 with a limit of two rings to a customer and that such coupon is worth \$4, and that the coupon represents savings effected by not spending "fabulous sums in national publications", or words of like tenor and effect, in connection with rings, the sale of which is not limited, and which rings are not diamonds, and which coupons have no value, and where no savings in advertising costs are passed on to the ultimate purchaser.

It is further ordered, That the said respondent within 60 days from and after the date of the service upon him of this order, shall file with the Commission a report or reports in writing, setting forth in detail the manner and form in which he is complying and has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF

J. MERRELL REDDING, DOING BUSINESS AS
ETHYL GAS COMPANY

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

Docket 1778. Complaint, Mar. 31, 1930—Decision, May 6, 1930

Where a corporation engaged under the name Ethyl Gasoline Corporation of New York in the sale of an antiknock fluid or motor fuel in interstate commerce and in the use of the term "Ethyl" in connection therewith; and thereafter an individual engaged in the sale of a fluid for treating motor fuel,

- (a) Designated, advertised, and labeled the aforesaid fluid as "Ethyl Gas" and "Ethyl Gas Anti-Knock" and falsely represented the same as an effective antiknock motor fuel, when mixed with gasoline;
- (b) Falsely represented that said Ethyl gas was similar to and gave the same results as the aforesaid Ethyl fluid of said Ethyl Gasoline Corporation of New York and that he was an agent thereof or connected therewith;
- (c) Furnished customers with signs for gasoline pumps similar to those used by and furnished to dealers in the product of the aforesaid Ethyl Gasoline Corporation of New York, so as to mislead and deceive the consuming public into believing his product to be that of the aforesaid corporation;
- (d) So colored his product that when mixed with gasoline the resulting mixture was similar in coloring to and undistinguishable from the product of the aforesaid Ethyl Gasoline Corporation, with the result of deceiving and misleading the purchasing public into believing its said product to be that of the aforesaid corporation; and
- (e) Simulated advertising information and instruction publications, and booklets of competitor;

With the capacity and tendency to cause and with the effect of causing retail distributors and the consuming public to purchase its said product as and for one with antiknock properties when used as a motor fuel, and to confuse said product with that of its several competitors;

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Henry C. Lank 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, an individual engaged in the sale of a fluid for treating motor fuel, alleged to give such motor fuel antiknock properties, with misrepresenting qualities, nature and identity of product, mis-