

Complaint

IN THE MATTER OF
ESPOSITER VARNI COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 1781. Complaint, Apr. 7, 1930—Decision, June 24, 1930

Where a corporation engaged in the importation and sale of semiprecious stones; sold, designated, and invoiced as rose quartz beads, Chinese quartz beads dyed the deep rose color naturally found in those cut from German, Swiss, and other quartz, and, because of the deep rose color naturally contained therein, in large demand for necklaces, without disclosing the dyeing of said inferior, cheaper, and otherwise undesired Chinese beads; with capacity and tendency to mislead and deceive the public into believing that its said so-called rose quartz beads had the natural instead of the artificial color, and into purchasing said beads in such belief, and with the effect of furnishing wholesale and retail jewelers means of misleading and deceiving customers and prospective customers into purchasing the same as and for the natural colored rose quartz beads as known to trade and public:

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

Mr. James M. Brinson 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 New York corporation engaged in the importation of semiprecious stones and in the sale and distribution thereof among the various States, and also in the sale of such stones purchased by it from importers or others, and with office and principal place of business in New York City, with misrepresenting its product, 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, offers and sells and by invoice or otherwise describes and designates as rose quartz beads, beads cut or carved from quartz in China, and so treated as to acquire and have the deep rose color long and still identified by the public with the genuine rose quartz beads carved from quartz in Germany, Switzerland and elsewhere, without disclosing that the

Findings

14 F. T. C.

color of the said beads has been imparted to them by dyeing. Said beads so dyed are purchased by it at a cost substantially less than that of the genuine rose quartz beads, are inferior thereto in quality, worth less and sell for less, and have no demand or market, in their natural color, among the consuming public.¹

Said offer and sale of such beads under the above circumstances, has had and has the capacity and the tendency to mislead and deceive the public into the belief that respondent's so-called rose quartz beads, "have the natural instead of artificial color, and to induce their purchase in reliance on such erroneous belief", and has furnished and furnishes wholesale and retail dealers in jewelry the means by which they have been and are enabled to mislead and deceive their customers and prospective customers into the purchase of respondent's so-called rose quartz beads, as and for the natural rose color quartz beads known to the trade and public as such, and said acts and practices of respondents are all to the prejudice of the public 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, the Federal Trade Commission issued and served a complaint upon the respondent, Espositer Varni Co., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act. Thereupon respondent filed its answer admitting each and every allegation of the complaint, stating its unwillingness to contest the proceeding, and agreeing that the Commission may accept as the facts in this matter the practices and methods alleged in the complaint and forthwith proceed to file its report stating its findings as to the facts and conclusion therefrom, without any testimony or evidence other than such admissions, and that it may thereupon make, enter, and serve upon respondent an appropriate order to cease and desist from the practices and methods charged in the complaint.

¹ Allegations of the complaint relating to genuine rose quartz beads are set forth therein as follows:

"There are and for many years last past have been offered for sale and sold in commerce among and between the various States of the United States, beads cut or carved from quartz in Germany, Switzerland, and elsewhere, which, on account of their natural deep rose color, have been described, designated and known, and now are described, designated and known as rose quartz beads. There has been and is a large demand for such beads for necklaces for women because of such deep rose color, and the designation rose quartz beads has come to signify and mean, and signifies and means to the trade and the public, beads cut or carved from quartz having the natural, deep rose color."

Thereupon this proceeding came on for final hearing before the Commission upon its complaint and the answer of the respondent, and the Commission having duly considered the record and being now fully advised in the premises files this its report in writing, stating as its findings of the facts as stated in the complaint and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Espositer Varni Co. is now and for several years last past has been a corporation organized and existing under and by virtue of the laws of the State of New York with office and principal place of business in the city of New York in the State aforesaid. It has been and is engaged in the importation of semiprecious stones and their sale and distribution in commerce among or between the various States of the United States. It also sells and causes to be transported, when sold, from its place of business in the State of New York to purchasers in the various other States of the United States, semiprecious stones which it has purchased in the United States from importers or others. It sells its products to wholesale dealers in such jewelry. In the course and conduct of such business respondent has been and is in competition with individuals, partnerships, and corporations similarly engaged in like commerce.

PAR. 2. There are and for many years last past have been offered for sale and sold in commerce among and between the various States of the United States, beads cut or carved from quartz in Germany, Switzerland, and elsewhere, which, on account of their natural deep-rose color, have been described, designated and known, and now are described, designated and known as rose quartz beads. There has been and is a large demand for such beads for necklaces for women because of such deep rose color, and the designation rose quartz beads has come to signify and mean, and signifies and means to the trade and the public, beads cut or carved from quartz having the natural, deep rose color.

PAR. 3. There have been and are cut or carved from quartz in China, beads which, on account of inferior quality of the stone, lack the deep rose color which long has been, and now is, associated with the designation rose quartz beads by the purchasing public. A process has been contrived by means of which such beads may be so dyed as to acquire and have the deep rose color by which the public has long identified, and now identifies, rose quartz beads. Such beads so dyed to resemble or simulate rose quartz beads with genuine, natural color of deep rose, have been imported for several years last past into the United States, and in the course and conduct of its

Order

14 F. T. C.

business respondent, without advising or disclosing that the color of such beads has been imparted by dyeing, has offered for sale and sold them as and for rose quartz beads, and by invoice or otherwise has so described and designated them to purchasers in various States of the United States. Such quartz beads so dyed have been and are purchased by respondent at a cost substantially less than the original cost of rose quartz beads of the genuine, natural color of deep rose. They are inferior in quality, worth less, and sell for less than rose quartz beads known as such by the public. There is no demand or market for them among the consuming public in their natural color.

PAR. 4. The offering for sale or selling by respondent as or for rose quartz beads, of beads cut or carved from quartz in China and dyed or colored to resemble or simulate the natural, deep rose color associated by the purchasing public with the name or designation rose quartz beads, without disclosing the essential and material fact that such beads have been dyed to resemble or simulate the deep rose color so associated by the public with the designation or name rose quartz beads, has had and has the capacity and tendency to mislead and deceive the public into the belief that such so-called rose quartz beads so offered for sale or sold by the respondent have the natural instead of artificial color, and to induce their purchase in reliance on such erroneous belief. The practice of respondent has furnished and furnishes wholesale and retail dealers in jewelry the means by which they have been and are enabled to mislead and deceive their customers and prospective customers into the purchase of such so-called rose quartz beads in the belief that they have been and are the natural colored rose quartz beads known to the trade and the public as such.

CONCLUSION

The practices of respondent as described in the above and foregoing findings as to the facts have been and are, under the conditions and circumstances described therein, unfair methods of competition in interstate commerce and constitute a 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

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer of the respondent wherein it agrees that the Commission may accept as the facts in this matter the practices and methods alleged in the

complaint and may forthwith proceed to file its report stating its findings as to the facts and its conclusion drawn therefrom without any testimony or evidence other than admissions of respondent in its answer, and may thereupon make, enter, and serve upon respondent its appropriate order to cease and desist from the practices and methods charged in the complaint, and the Commission having filed its report stating its findings as to the facts and its conclusion therefrom that the respondent Espositer Varni Co. 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 respondent Espositer Varni Co., its officers, agents, servants, and employees, cease and desist directly or indirectly from describing, designating, offering for sale, or selling any products in interstate commerce as rose quartz beads, unless cut, carved, or manufactured from rose quartz.

It is further ordered, That respondent Espositer Varni Co. file with the Commission within 60 days from and after the service of this order, a report in writing setting forth in detail the manner and form of its compliance therewith.

IN THE MATTER OF
THE NORTHWEST TILE & MANTEL CONTRACTORS'
ASSOCIATION ET AL.

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

Docket 1764. Complaint, Apr. 21, 1930¹—Decision, June 26, 1930.

Where an organization, the members of which were engaged in the purchasing, placing, and laying of tiles in various States; and said members, in pursuance of an agreement and undertaking to cooperate to (1) prevent manufacturers from shipping and selling tile to nonmember contractors in the business and States concerned, or (2) prevent such manufacturers from making shipments to such contractors except at prices substantially higher than those at which the product was sold to members or (3) prevent nonmember contractors from securing contracts, or from laying and placing tiles in the securing or fulfillment thereof, through cooperation with union tile setters or union representatives,

- (a) Coerced and attempted to coerce manufacturers into refusing (1) to supply other contractors with tile or (2) so to supply them except at prices substantially higher than those charged the members, and prevented nonmember contractors from securing contracts or procuring necessary labor incident to the securing and carrying out of contracts, through cooperation with union tile setters or union representative, with the common purpose of restricting the purchase, laying, and placing of tiles throughout the Northwest Pacific States concerned to their own members;
- (b) Notified manufacturers or their representatives that if such manufacturers sold and supplied tile to nonmember contractors, they, the members, would cease purchasing therefrom; and
- (c) Refused to admit to membership in the organization other contractors desiring to join in order to obtain tile at substantially the same prices paid by the members, with intent of restricting the purchase, laying, and placing of tile to present members;

With the result that competition in the purchase, laying, and placing of tiles in the States concerned was substantially lessened, manufacturers were prevented from selling their tile to nonmember contractors or prevented from so selling same except at prices substantially higher than those at which sold to members, cost of placing and laying tile was enhanced over that which would prevail under normal, natural, and open competition, and the natural flow of commerce in said commodities and the channels of interstate trade was hindered; all to the prejudice of the public and competitors:

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

Mr. Ellis De Bruler for the Commission.

Mr. H. A. P. Myers, of Seattle, Wash., and *Mr. John R. Latour-elle*, of Portland, Oreg., for respondents.

¹ Amended.