

Complaint

14 F. T. C.

IN THE MATTER OF
M. J. GROPPER & SONS, INC.

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

Docket 1722. Complaint, Mar. 17, 1930—Decision, Nov. 17, 1930

Where a corporation engaged in the sale of glass marbles so manufactured as to simulate onyx, to toy jobbers, chain stores, and mail-order houses, designated said marbles as "National Onyx Agates" and "National Onyx Marbles" in circulars, advertisements, price lists and other printed matter, and on the containers thereof described said articles as "Onyx", with the result of furnishing customers with a means of representing said product to ultimate purchasers as composed of onyx, and with capacity to mislead customers, and ultimate purchasers from such customers, as to composition of said products:

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. PGad B. Morehouse for the Commission.

Brill, Bergenfeld & Brill, 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, a New York corporation engaged in the sale of marbles to toy jobbers, chain stores and mail-order houses throughout the various States, from its principal place of business in New York City or from the factory of the company for which it was sole distributor, at Ottawa, Ill., with advertising falsely or misleadingly, and 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.

Respondent, as charged, engaged as above set forth, describes and represents its said marbles as "National Onyx Agates" and "National Onyx Marbles" in its circulars, advertisements, price lists, and other printed matter, the fact being that the products in question are not made of onyx, but of glass so made as to simulate the same, and further describes and designates said articles on the containers thereof as "Onyx" marbles, thereby furnishing its said customers with the means whereby the product may be and is falsely represented to the purchaser as composed of onyx.

Such representations and practices, as alleged, "have the tendency and capacity to mislead and deceive its customers and the ultimate purchasers from such customers throughout the various States of the United States into the belief that said customers and purchasers, when buying the respondent's product so advertised and sold, are purchasing a product made of onyx"; all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition 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, M. J. Gropper & Sons, Inc., a corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance herein and filed its answer to said complaint, a stipulation as to the facts (filed of record) was agreed upon by and between respondent and counsel for the Commission, wherein it was stipulated and agreed that the facts therein stated may be taken as the facts in the proceeding before the Federal Trade Commission, and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed further upon said statement to make its report in said proceeding, stating its findings as to the facts and conclusion, and entering its order disposing of the proceeding.

Thereupon, this proceeding came on for decision, and the Commission, having received said stipulation and duly considered the record, and now being fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of New York, having its principal place of business at 200 Fifth Avenue, New York City, State of New York. It is now and for more than one year last past has been engaged in the business of selling and distributing marbles in commerce between and

Conclusion

14 F. T. C.

among the various States of the United States, causing said products, when sold, to be shipped from its place of business in the State of New York, or from the factory at Ottawa, Ill., of the Peltier Glass Co., an Illinois corporation of which the aforesaid respondent is sole distributor, to the purchasers thereof located throughout the various States of the United States. In the course and conduct of its aforesaid business the respondent is in competition with other corporations, individuals, and partnerships engaged in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business the respondent offers for sale, sells, and distributes its aforesaid product to toy jobbers, chain stores, and mail-order houses throughout the various States of the United States, and in its circulars, advertisements, price lists, and other printed matter used in connection with such sale and distribution, respondent describes and represents and has heretofore described and represented its said marbles as "National Onyx Agates" and "National Onyx Marbles", thereby representing to such purchasers and prospective purchasers that its marbles are made of onyx, whereas in truth and in fact such marbles are not made of onyx, but are made of glass so manufactured as to simulate onyx. And respondent likewise on its boxes or containers wherein its said marbles are packed for resale to the ultimate purchaser, has described and designated said marbles as "Onyx" marbles, thereby furnishing its customers, to wit, the toy jobbers, chain stores, and mail-order houses throughout the various States of the United States with the means whereby the said product may be and is represented to the ultimate purchaser as being composed of onyx, when in truth and in fact it is composed of glass so manufactured as to simulate onyx.

PAR. 3. The foregoing representations and practices of respondent have had and do have the capacity to mislead its customers and the ultimate purchasers from such customers throughout the various States of the United States into the erroneous belief that they are purchasing a product made of onyx.

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 respondent's 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, M. J. Gropper & Sons, Inc., a corporation, its agents and employees do cease and desist from the use of the word “onyx” in connection with the advertisement, sale or distribution by it in interstate commerce, of marbles made of glass so manufactured as to simulate onyx, without plainly qualifying said word in a manner that will clearly indicate that such marbles are not made of onyx.

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.

Complaint

14 F. T. C.

IN THE MATTER OF
ROYAL BAKING POWDER COMPANY

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATIONS OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1499. Complaint, Mar. 7, 1928—Order, Dec. 2, 1930

Order requiring respondent corporation to cease and desist from—

- (a) Publishing directly or indirectly adverse, disparaging, or derogatory interviews, expressions, etc., relative to competitive baking powders and concealing or withholding its connection with or interest in such publications and causing such expressions, etc., to appear as anonymous and disinterested or the voluntary interviews, etc., of disinterested and technically qualified authorities or persons acting only in the public interest or to be merely usual news items published only as matters of public interest and not at its inspiration or for its use and benefit; and
- (b) Representing directly or indirectly that the Commission has approved or adopted the report of its examiner in the proceeding in docket 540 against it or has through such method or means or by findings, orders, or otherwise decided whether or not an ingredient or ingredients of any baking powder are injurious to the health of the users of the powder or has in anywise or way approved any method or methods or sales policy of it.

Mr. Martin A. Morrison for the Commission.

Moore, Hall, Swan & Cunningham, of New York City, and *Covington, Burling & Rublee* and *Mr. John Marshall*, of Washington, D. C., for respondent.

COMPLAINT

Acting in the public interest, 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 charges that the Royal Baking Powder Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of section 5 of the said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Royal Baking Powder Co., is a corporation organized under the laws of the State of New Jersey, with its principal office and place of business in the city of New York, State of New York. It is engaged in the manufacture of baking powder and the sale thereof to purchasers located at various points in States other than the State of New York. It causes its said