

Complaint

IN THE MATTER OF

ROYAL BAKING POWDER COMPANY

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 540. Complaint, Apr. 18, 1923—Order, Dec. 3, 1930*

Complaint charging respondent company with disparaging and misrepresenting products of competitors directly and through ostensibly disinterested and informed sources; dismissed for reasons in order set forth.

Mr. Robert O. Brownell and Mr. Martin A. Morrison for the Commission.

Mr. Archibald Cox, Hall, Cunningham, Jackson & Haywood and Moore, Hall, Swan & Cunningham, of New York City, *Fitzgerald, Abbott & Beardsley*, of Oakland, Calif., and *Mr. Dale D. Drain, O'Brien & O'Brien, Mr. Frank W. Mondell and Covington, Burling & Rublee*, of Washington, D. C., for respondent.

Mr. C. C. McChord, of Washington, D. C., general counsel (*Mr. H. B. Jones* of *Bronson, Robinson & Jones*, of Seattle, Wash., *Mr. Harry D. Nims* of *Nims & Verdi*, of New York City, and *Mr. John Walsh* and *Mr. Daniel R. Forbes*, of Washington, D. C., associate counsel) for intervenors *R. B. Davis Co., Seagull Specialty Co., Kenton Baking Powder Co., Crescent Manufacturing Co., Calumet Baking Powder Co., Southern Manufacturing Co., and Rich Maid Manufacturing Co., Inc.*, and *Mr. Marvin Farrington*, of Washington, D. C., for intervenor *A. Schilling & Co.*

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 respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. That the respondent, Royal Baking Powder Co., is a corporation chartered and organized under the laws of New Jersey, by which was effected a consolidation of four previously organized corporations, one by the same name, the Cleveland Baking Powder Co., Price Baking Powder Co., and the Tartar Chemical Co., having its principal office and place of business at 135 Williams Street, New

¹ Supplemental and amended.

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York City, State of New York, and for a number of years last past has been engaged in the manufacture and sale, in interstate commerce, of baking powder, in and among the several States of the United States, Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in compounding such baking powders one of the necessary ingredients is an acid. The respondent derives its acid from cream of tartar—tartaric acid. Many of its competitors derive theirs from aluminum salts—sodium aluminum sulphate (SAS).

PAR. 3. That the respondent, in its own name, and in the names of its subsidiaries or constituent bodies—the Cleveland Baking Powder Co. and the Price Baking Powder Co.—has used and now uses the following unfair and unlawful methods of competition for the purpose and with the intent of injuring its competitors and unlawfully restraining their trade, to wit:

Specification I. The respondent has by the use and circulation of pamphlets, cook books, circulars, and by advertisements in newspapers, magazines, and other periodicals, and by oral statements of its salesmen and house-to-house sales persons, demonstrators and canvassers, and by radio broadcasting, and otherwise, by direct written and oral statements and innuendo and inference, pursuant to a general plan and system of defamation, and disparagement of competitors' products, and misinformation of the public, falsely represented, charged, alleged and asserted that several of its competitors manufacture and sell baking powders containing alum which the general public understands to be the astringent commonly sold in drug stores and chemically known as potassium aluminum sulphate (PAS).

Specification II. Respondent, by all the several means alleged in specification I, and in pursuance of a like plan and system as therein set forth, has falsely represented, charged, alleged and asserted that the acid ingredient of the baking powder products of several of its competitors, to wit, sodium aluminum sulphate (SAS), is one of the same substance as alum, to wit, potassium aluminum sulphate (PAS), which the general public understands to be the astringent commonly sold in drug stores and chemically known as potassium aluminum sulphate (PAS), and that, by reason of said falsely claimed alum (PAS) ingredient, such competitors' powders are harmful, unhealthy, poisonous, deleterious, and dangerous to users and consumers of baked stuffs made therefrom.

Specification III. Respondent by means of oral statements of its salesmen and house-to-house sales persons, demonstrators, and

canvassers, and radio broadcasting, and otherwise, by direct written and oral statements, pursuant to said general plan and system of defamation and disparagement of competitors' products and misinformation of the public, has falsely represented, charged, alleged and asserted, substantially as follows:

- (a) That competitors' powders are poisonous;
- (b) That competitors' powders are made from ground-up aluminum cooking utensils;
- (c) That competitors' powders do not come within the pure food laws;
- (d) That competitors' powders pucker up the stomach in the same manner that lump alum puckers the mouth;
- (e) That competitors' powders are made of the same substance which is used for styptic purposes after shaving.

PAR. 4. That respondent, in order to protect the use and sale of its baking powders against the competition of its competitors' baking powders adopted the practice of publishing and causing to be published adverse, disparaging, and derogatory opinions, statements, and comments, as aforesaid, regarding the nature, composition, and effect of its said competitors' baking powders, which practice it put into operation on an extensive scale and carried into effect vigorously throughout a wide area of population. Respondent carefully concealed its connection with and interest in the various methods, devices, and agencies through which this practice was carried into effect and caused the expressions, opinions, and comments to seem to be either anonymous, and therefore disinterested, or the voluntary contributions of disinterested and technically qualified authorities or persons acting in the public interest. Respondent has used this practice for several years and still continues to use it. The practice as carried into effect by respondent tends to create a state of mind in the purchasing public which is detrimental to the purchase and use of competitors' baking powders and consequently tends to the injury of the business conducted by the manufacturers thereof.

The above alleged acts and things done by respondent are all to the prejudice of the public and competitors of the respondent, and constitute unfair methods of competition in commerce, within the intent and meaning 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 DISMISSING COMPLAINT

The above case coming on for consideration before the Commission on a motion filed herein by the respondent to vacate the Commission's

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order dated July 7, 1926, herein, and to reinstate the Commission's order dismissing the complaint herein dated March 23, 1926, and the Commission having duly considered the same,

It is ordered, That said motion be, and hereby is, overruled.

And now, It appearing to the Commission that respondent has definitely abandoned the use of the methods and practices charged by the Commission in its amended and supplemental complaint issued in this case, and has not used them or any of them since the 7th day of July, 1926; and it further appearing that more than one year ago the title to the capital stock and share capital of the respondent corporation was transferred to, and is now held by, persons who had no connection with or interest in the respondent prior to the month of September, 1929, and no connection with or responsibility for the use of the methods and practices charged in said amended and supplemental complaint to be unfair and unlawful; and it further appearing to the Commission that respondent in the hands of its present owners and officers has definitely adopted and continuously maintained a sales policy that includes none of the acts or methods so charged to be unfair and unlawful; and it further appearing to the Commission that there is no probability of a renewal thereof by the respondent;

It is ordered, By the Commission on its own motion that the amended and supplemental complaint issued by the Commission herein be, and the same hereby is, dismissed, without any prejudice to the rights of the Federal Trade Commission or of the respondent, Royal Baking Powder Co.

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IN THE MATTER OF
ARNOLD STONE COMPANY, 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 1732. Complaint, Dec. 11, 1929—Decision, Dec. 8, 1930*

Where a corporation engaged in the manufacture and sale of products composed of cement, crushed stone, and other ingredients, designated the same as "stone", "cast stone", "cut cast stone", "pink marble", "Kre-tex stone", "Kre-tex cast stone" or "Kre-tex cut cast stone", notwithstanding the fact that aforesaid products were neither stone nor marble in either the geologic or architectural sense nor cast stone; with capacity and tendency to mislead, deceive or confuse the purchasing public and particularly such secondary purchasers as buyers or lessees of completed buildings or parts thereof containing aforesaid products thus designated, described and referred to, into believing same to be the product quarried from the ground or otherwise obtained in its natural state and generally known as stone:

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. Robert H. Winn for the Commission.

Mr. F. C. Hillyer, of Jacksonville, Fla., and *Curtis, Fosdick & Belknap*, 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 Florida corporation, engaged in the manufacture of artificial products for use as substitutes for natural stone in architectural work, and in the sale and distribution thereof among various States, and with principal place of business in Jacksonville, with using misleading corporate name, misrepresenting product as to composition, 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, designated its product, not quarried from the ground or otherwise obtained in the natural state and understood by the purchasing public as being stone, but "manufactured and/or fabricated and composed of a product or