

Complaint

IN THE MATTER OF
TEXTILEATHER CORPORATIONCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1585. Complaint, Mar. 22, 1929—Order, Oct. 5, 1931*

Consent order requiring respondent corporation to cease and desist from using the names or terms Regaleather, Marvelather, Royaleather, Modeleather, Drillhyde, Gimphyde, Krafthyde, or word or term "Textileather" in connection with the offer or sale of products not made of leather; subject to permitted, appropriately qualified use of said last named word or term, as in said order set forth.

Mr. E. J. Hornibrook for the Commission.

Marshall, Melhorn, Marlar & Martin, of Toledo, Ohio, and *Mr. Harry J. Gerrity*, 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 Textileather Company, 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. Respondent is a corporation organized under the laws of the State of New Jersey with its principal office and place of business in the City and State of New York. It is engaged in the manufacture of imitation leathers hereinafter described, and the sale of said products to manufacturers of trunks, suitcases, satchels, upholstered articles, and other similar products, who manufacture many of said products in whole or in part of said imitation leathers. Said manufacturers are located at points in various States of the United States. Respondent causes its said imitation leathers when so sold to be transported from its said principal place of business and various branch places of business operated by it into and through States other than those in which are located its said places of business, to said purchasers at their respective points of location. In the course and conduct of its said business respondent is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of leather and imitation leather in commerce between and among various States of the United States.

Complaint

15 F. T. C.

PAR. 2. The imitation leathers which respondent manufactures and sells as set out in paragraph 1 hereof, consist of coated fabrics made in imitation of, but containing no leather.

PAR. 3. Respondent names and designates its said product "Textileather," and names and designates certain kinds and styles of its said product with the names "Regaleather," "Marveleather," "Royaleather", "Modeleather", "Drillhyde", "Gimphyde", and "Krafthyde", respectively, and sells said various kinds and styles of its said product under said names and designations. Respondent also advertises said product under said names and its said trade name "Textileather" in sundry trade journals and in circulars, letters, price lists, and other printed matter sent by respondent to customers and prospective customers.

PAR. 4. Respondent's aforesaid vendees sell the trunks, suitcases, satchels, upholstered articles and other similar products which they make to retail dealers in various states of the United States, and said retail dealers in turn resell said articles to the consuming public.

PAR. 5. The use by respondent of the names and designations "Textileather", "Regaleather", "Marveleather", "Royaleather", "Modeleather", and "Drillhyde", "Gimphyde" and "Krafthyde", respectively, as set out in paragraph 3 hereof, places in the hands of respondent's aforesaid vendees and said retailers the means of committing a fraud upon retail dealers and eventually upon the consuming public by enabling said vendees and retailers to represent and sell the products made by them in whole or in part of said artificial leathers as in paragraph 1 hereof set out, to retail dealers and ultimate consumers as and for articles made in whole or in part of real leather.

PAR. 6. There are among the competitors of respondent referred to in paragraph 1 hereof many who sell and supply real leather to manufacturers of trunks, suit cases, satchels, upholstered articles, and other similar products, and said manufacturers correctly represent to the retail trade that aforesaid products made by them are composed in whole or in part of real leather. There are others of said competitors who sell and supply to such manufacturers artificial leathers and who in nowise represent that the artificial leathers so sold by them are composed either in whole or in part of real leather. Above alleged acts and practices of respondent tend to and do divert business from, and otherwise injure said competitors.

PAR. 7. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the

299

Order

intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

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, on the 22d day of March, 1929, issued its complaint against Textileather Corporation and caused the same to be served upon respondent as required by law, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. On the 25th day of March, 1929, respondent was duly and legally served with a copy of such complaint and notice requiring respondent within thirty days from aforesaid date of service, unless said time be extended by order of the Commission, to file with the Commission an answer to said complaint; and in said notice respondent was further notified of the provisions of Rule III of the Commission's Rules of Practice with respect to answers, paragraph 2 of which reads as follows:

In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint or that respondent admits all of the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint, to waive a hearing thereon and to authorize the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, to make, enter, issue and serve upon respondent an order to cease and desist from the method or methods of competition charged in the complaint.

The respondent on May 22, 1929, filed herein an answer on the merits.

On the 14th day of September, 1931, respondent filed herein an answer in the following language:

The respondent asks leave to withdraw its answer heretofore filed herein and refrains from further contesting this proceeding and consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the alleged violations of the law set forth in the complaint.

Thereupon, leave having been granted respondent to withdraw its said answer on the merits and this proceeding having been heard by the Federal Trade Commission upon the complaint of the Com-

Order

15 F. T. C.

mission and the answer quoted above, and the Commission having concluded 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 respondent, Textileather Corporation, its officers, agents, representatives, and employees shall cease and desist:

1. From using the names or terms Regaleather, Marveleather Royaleather, Modeleather, Drillhyde, Gimphyde, Krafthyde, or any other word, phrase, or term of like import in connection with the advertising, offering for sale and sale or otherwise, in commerce among the several States of the United States or within the District of Columbia or with foreign nations of a product not made of leather;

2. From using the word or term Textileather as a trade name, brand or label or otherwise in connection with the advertising, offering for sale and sale, in commerce among the several States of the United States or within the District of Columbia or with foreign nations of a product not made of leather and from using said word or term in letters, letterheads, stationery, in price lists, catalogues, magazines, trade journals, on samples or on such product or otherwise unless the word or term Textileather is always accompanied by words printed, stamped, or written in letters readily discernible; apt and adequate to indicate plainly that said product is not leather; but this shall not prohibit the use of the term Textileather as a part of the corporate name of the respondent so long as the same is not used to advertise or describe respondent's product.

It is further ordered, That the respondent Textileather Corporation, shall, within six months after service upon it of a copy of this order to cease and desist file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF

PARA PAINT & VARNISH COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 1932. Complaint, June 1, 1931¹—Decision, Oct. 5, 1931

Where a corporation engaged in the sale and distribution of ready mixed paints and varnish to retail dealers, represented the content of a certain paint so dealt in by it as 30 per cent carbonated white lead and 15 per cent zinc oxide, in label descriptions thereon purporting to show composition thereof and percentage of different ingredients making up same, facts being less than one-seventh of pigment content consisted of aforesaid ingredients and formula failed to disclose vehicle content of from 5.8 to 7 per cent by weight of water; with effect of misleading and deceiving the trade and general public as to said paint's composition and into buying same believing in truth of said representations, and with capacity and tendency so to do, and to divert trade from and otherwise injure competitors selling paint truthfully and accurately represented:

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. 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, an Ohio corporation engaged in the sale and distribution of ready mixed paints and varnishes to retail dealers in various States, and with principal office and place of business in Cleveland, with misbranding or mislabeling as to composition and ingredients, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent sets forth upon the labels of one of its paints formulae purporting to show both the pigment and vehicle content thereof, but which in fact grossly misstate the white lead and zinc oxide content, and fail to disclose the presence in the latter of some 6 to 7 per cent of water, with capacity and tendency to mislead and deceive the trade and general public, and with effect of so misleading said trade and public in respect of the ingredients of said paint, and their proportions, and with the further effect of misleading and deceiving the purchasing public into buying said paint believing in

¹ Amended.