

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, 1931<sup>1</sup>—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

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<sup>1</sup> Amended.

the truth of such representations, and with the capacity and tendency so to do, and to divert trade from and otherwise injure competitors selling in interstate commerce paint truthfully and accurately represented; to the prejudice of the public and competitors.<sup>2</sup>

Upon the foregoing complaint, the Commission made the following

#### REPORTS, 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, on March 27, 1931, issued its complaint against Para Paint & Varnish Co., a corporation, respondent above mentioned, and on March 30, 1931, caused the same to be served upon respondent as required by law, in which complaint it was charged that respondent had been, and was using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. Subsequent thereto and prior to the filing of any answer by respondent, the Federal Trade Commission, on June 1, 1931, issued an amended complaint against Para Paint & Varnish Co., a corporation, respondent above mentioned, and on June 2, 1931, 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. By notice contained in said complaint respondent was notified and required 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 the Commission's Rules of Practice with respect to answer and failure to answer, said provisions being set forth in *haec verba* in said notice and providing in part as follows (Rule III, subdivision 3):

8. Failure of the respondent to file answer within the time as above provided for shall be deemed an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Respondent has not at any time caused its appearance to be entered in this proceeding, nor has it during said thirty-day period specified

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<sup>2</sup> Findings are in the same or substantially the same language as the allegations of the complaint, including the false and misleading formula alleged in the complaint.

in said notice, or at any time, made or filed answer to said complaint. It has at no time requested that the time within which it may file answer be extended, nor has the Commission granted any such extension of time.

Thereupon this proceeding came on for final hearing, and the Federal Trade Commission, acting pursuant to said act of Congress and its aforesaid Rules of Practice, having duly considered the record and being fully advised in the premises, makes this report in writing, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Ohio with its principal office and place of business in the city of Cleveland in said State. It is and for more than three years last past has been engaged in the business of selling and distributing ready mixed paints and varnish to retail dealers located at points in various States of the United States. Respondent delivered said products when sold by causing them to be transported from its place of business in the city of Cleveland, Ohio, to purchasers located at points in various States of the United States. In the course and conduct of its business respondent was and still is in competition with other corporations, partnerships, and individuals likewise engaged in the sale and distribution of ready mixed paints and varnish among the various States of the United States.

PAR. 2. Respondent in the course and conduct of its aforesaid business causes advertisements describing its ready mixed paints to be inserted in various periodicals, magazines, and trade journals of general circulation throughout the United States, and sends pamphlets, circulars, color cards, and price lists to customers and prospective customers advertising, describing, and soliciting the sale of said ready mixed paints. Respondent also solicits the sale and sells its ready mixed paints to dealers through traveling salesmen. Through said means the respondent obtains many orders for its aforesaid ready mixed paints from persons residing respectively in various States of the United States, and upon receiving said orders, the respondent fills the same and completes the sales thus made by causing the ready mixed paints so ordered and purchased to be transported from its place of business in the city of Cleveland, Ohio, to such vendees at their respective points of business location.

## Findings

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PAR. 3. The ready mixed paints dealt in by respondent are put up in commercial tin can containers on which are printed the respective brand names of the paints contained therein. Among the paints dealt in by respondent is a ready mixed paint designated Para. Respondent described and now describes said Para ready mixed paint by means of a label affixed to said can containers, which remains thereon until the same reaches the consumer. Said label on said cans carries a description of the composition including the percentage of each ingredient of said paint. The label description of the composition of said paint and the percentage of each ingredient reads as follows:

| C. base                    | Per cent | C. base                  | Per cent |
|----------------------------|----------|--------------------------|----------|
| Carbonated white lead..... | 30       | Refined linseed oil..... | 60       |
| Zinc oxide.....            | 15       | Mineral spirits.....     | 24       |
| Barium sulphate.....       | 27       | Japan dryer.....         | 16       |
| Calcium carbonate.....     | 10       |                          | 100      |
| Magnesium silicate.....    | 18       |                          |          |
|                            | 100      |                          |          |

PAR. 4. The said label description of the composition of respondent's said ready mixed paint is false in that it does not truthfully describe substantially or otherwise the true content of the cans to which it is affixed. The label description of the pigment content is grossly misleading and untrue in that less than one-seventh of the said content consists of white lead and zinc oxide, the remainder being lithopone, calcium carbonate, barium sulphate, and siliceous matter. The label description of the vehicle content is grossly misleading and untrue in that said vehicle contains approximately from 5.8 to 7 per cent by weight of water, the presence of which is not disclosed on the formula label.

PAR. 5. There are many competitors who manufacture and sell ready mixed paints to retail dealers for resale to the purchasing public, which competitors truthfully represent the content of the paints they sell.

PAR. 6. The said representations made by the respondent as set forth in this amended complaint are deceptive and misleading and have and had the capacity and tendency to and do mislead and deceive the trade and the general public into believing the paint contained in fact the ingredients designated on said labels and in the proportions represented thereon.

PAR. 7. The above and foregoing representations of respondent, in connection with the sale of its ready mixed paint in interstate

commerce as aforesaid, had the capacity and tendency to mislead and deceive and have misled and deceived the purchasing public into buying respondent's said paint under the belief that such representations were true and to divert trade from and otherwise injure competitors of respondent engaged in selling in interstate commerce paint truthfully and accurately represented.

#### CONCLUSION

The above acts and practices of the respondent under the conditions and circumstances herein set forth are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in interstate commerce within the 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

This proceeding having been heard by the Federal Trade Commission upon the record, and the Commission having made its report in which it stated its findings as to the facts and conclusion that respondent Para Paint & Varnish Co., a corporation, 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 Para Paint & Varnish Co., a corporation, its officers, agents, representatives, servants, and employees cease and desist in the course or conduct of offering for sale or selling paint material or ready mixed paints in interstate commerce:

1. From representing by labels on cans containing paint offered for sale or sold by it, or in any other way, that the paint so offered for sale or sold contains 30 per cent carbonated white lead, unless and until the paint so represented contains as 30 per cent of its pigment content, carbonated white lead.

2. From representing by labels on cans containing paint offered for sale or sold by it, or in any other way, that the paint so offered for sale or sold contains 15 per cent zinc oxide, unless and until the paint so represented contains as 15 per cent of its pigment content, zinc oxide.

3. From representing by labels on cans containing paint offered for sale or sold by it, or in any other way, that the paint so offered for sale or sold contains certain ingredients in certain proportions,

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unless and until the paint so represented contains the ingredients in the proportions represented.

4. From representing by labels on cans containing paint offered for sale by it, or in any other way, that the paint offered for sale by it has a certain vehicle content in certain proportions, unless and until the paint so represented has the represented vehicle content in the proportions represented.

*It is further ordered*, That respondent Para Paint & Varnish Co., shall within 60 days after service upon it of a copy of this order file with the Federal Trade Commission, a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and to desist hereinabove set forth.

## Complaint

## IN THE MATTER OF

B. ROSENBERG, AN INDIVIDUAL, TRADING AS GLOBE  
SUPPLY COMPANY

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

*Docket 1963. Complaint, July 7, 1931—Decision, Oct. 5, 1931*

Where an individual engaged in the business of assembling, selling and distributing knives and other cutlery to jobbers and wholesale and retail dealers, sold certain knives and cutlery made of carbon steel plated with chromium and so prepared as to imitate stainless steel, branded and labeled as "Stainless" or "Globe Stainless"; with tendency and capacity to deceive ultimate purchasers of said product into the erroneous belief that they were made of stainless steel, and to divert trade to him from competitors selling and distributing knives and cutlery truthfully stamped, branded, or labeled, and otherwise injure such competitors, and with result of causing to be placed in hands of retail dealers therein the means of committing a fraud upon ultimate purchasers of aforesaid products:  
*Held*, That such practices, under the circumstances set forth, were to the injury and prejudice of the public and competitors, and constituted unfair methods of competition.

*Mr. J. Butler Walsh* 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 as Globe Supply Co. in the sale and distribution to jobbers, wholesalers and retail dealers in cutlery, and to the general public, of knives and other cutlery manufactured and sold in simulation of such products made of "stainless steel," and with principal place of business in New York City, with advertising falsely or misleadingly and misbranding or mislabeling as to composition or nature of 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, in competition with other individuals and concerns dealing in products of the same kind and nature as himself, and in competition with those dealing in knives and other cutlery made of true stainless steel, i. e.,