

IN THE MATTER OF
HARRY GREENBERG AND LEE JOSEFSBERG, TRADING
AS GREENBERG & JOSEFSBERG

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

Docket 2030. Complaint, Apr. 28, 1932—Decision, June 27, 1932

Where a firm engaged in importation and sale of wooden rulers, offered and sold as "Boxwood" or "Warranted Boxwood" rulers not made of wood of West Indian or Venezuelan boxwood tree, and so branded same; with capacity and tendency to mislead and deceive trade and purchasing public in respect of the composition or nature of said products, and induce their purchase as and for rulers of genuine boxwood, long offered and sold under said trade name and widely esteemed for their utility and excellence, and with result of furnishing dealers with the means of misleading and deceiving said trade and public in aforesaid respects, and of diverting trade to said firm from competitors dealing in genuine boxwood rulers, and those dealing in rulers made of other woods truthfully branded and described, and with capacity and tendency so to do:

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. Alfred M. Craven 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 respondents Harry Greenberg and Lee Josefsberg, engaged as Greenberg & Josefsberg in importation of merchandise including wooden rulers, and in sale thereof among the various States, and with principal place of business in New York City, with 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; in that respondents sell wooden rulers not made of the wood of the boxwood tree, falsely branded as "Boxwood" or "Warranted Boxwood," at prices substantially lower than those prevailing for genuine "Boxwood" rulers; with result of furnishing dealers with the "means to mislead and deceive the purchasing public, including the trade," into believing products in question to be rulers made of West Indian boxwood tree, and with capacity and tendency to mislead and deceive and induce purchase of said rulers in reliance on such erroneous belief, and to divert trade to them from competitors dealing in genuine boxwood rulers, and competitors

dealing in rulers made of other woods, truthfully branded and described, and with effect of so diverting; all to the prejudice of the public and competitors.

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 its complaint, together with notice of hearing and a copy of the rules of practice adopted by the Commission with respect to failure to answer, against the respondents, Harry Greenberg and Lee Josefsberg, trading under the firm name and style of Greenberg & Josefsberg, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondents having made no appearance herein and the chief counsel of the Federal Trade Commission having moved that the allegations of the complaint be taken by the Commission as admitted, and that the Commission proceed to make its findings of fact and to issue a cease and desist order, and it appearing to the Commission that the said respondents were duly served with the complaint, together with notice of hearing and a copy of the rules of practice adopted by the Commission, and that said respondents have failed to file any answer to the complaint within the time fixed by the rules of the Commission and designated in said notice of hearing, or at all, and have failed to make any appearance whatsoever in this proceeding, and the Commission having duly considered the record and being fully advised in the premises, now makes its report, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Harry Greenberg and Lee Josefsberg, trading under the firm name and style of Greenberg & Josefsberg with their principal place of business in the City of New York and State of New York, have been for several years last past, and now are engaged in the importation, and the sale in commerce among and between the various States of the United States of merchandise including articles usually known as wooden rulers, and it has been and is the practice of said respondents to transport or cause said products to be transported from its said place of business in the State of New York to purchasers in the various other States of the United States than

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the State of New York. Respondents have been and now are in the course and conduct of such business in competition with individuals, partnerships, and corporations engaged in the sale of wooden and other rulers in like commerce.

PAR. 2. It has been and is the practice of respondents to offer for sale and sell in the course of their business described in paragraph 1 hereof, certain wooden rulers branded as, and under the trade name of "Boxwood" or "Warranted Boxwood." The word "Boxwood," as applied to wooden rulers, has for many years last past signified and meant, and now signifies and means, and is generally understood by the trade and the purchasing public to signify and mean the wood of the Boxwood tree, which is a native of the West Indian Islands and of Venezuela, botanically known as *Casearia Praecox*. Wooden rulers made of the wood of the Boxwood tree or of *Casearia Praecox* from the West Indies have long been offered for sale and sold generally in the United States under the trade name of Boxwood, and have long had and now have a wide reputation for their utility and excellence.

In truth and in fact the wooden rulers offered for sale and sold by respondents in course of the commerce described in paragraph 1 hereof branded as and under the trade name of Boxwood, were not, and have not been, and are not made out of wood of the Boxwood tree, or of the tree botanically known as *Casearia Praecox* and it has been and is the practice of respondents to sell such wooden rulers, falsely branded as "Boxwood" or "Warranted Boxwood," at a price or at prices substantially less than the price or prices at which rulers made out of genuine Boxwood have been and are sold.

PAR. 3. The practice of respondents in offering for sale and selling as and for Boxwood rulers, a product made from and out of other wood than the wood of the Boxwood tree or *Casearia Praecox* has had and has the capacity and tendency to mislead and deceive and has furnished and furnishes dealers with the means to mislead and deceive the purchasing public, including the trade, into the belief that the product of respondent branded and described as Boxwood rulers, have been and are rulers made out of the wood of the West Indian Boxwood tree, and to induce the purchase of such so-called Boxwood rulers in reliance on such erroneous belief.

The aforesaid practice of respondents has had and has the capacity and tendency to divert and does divert trade to respondents both from competitors offering for sale and selling in interstate commerce wooden rulers made from wood of the Boxwood tree, botanically known as *Casearia Praecox*, and from competitors offering for sale and selling in such commerce wooden rulers made out of other woods

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than the woods of the Boxwood tree truthfully branded and described.

CONCLUSION

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and to the competitors of respondents and are unfair methods of competition in commerce in violation 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 and considered by the Federal Trade Commission upon the record, and the Commission having made its findings as to the facts and the conclusion that the respondents have 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,"

Now, therefore, it is ordered, That the respondent, Harry Greenberg and Lee Josefsberg, and each of them, in connection with the sale or offering for sale in commerce between and among the several States of the United States and within the District of Columbia, of wooden rulers, do cease and desist:

From using the word "Boxwood" as descriptive of said rulers, or any of them, unless the rulers so described are made of wood of the Boxwood tree, botanically known as *Casearia Praecox*, grown in the West Indies.

It is further ordered, That the respondents shall within 30 days after the service upon them of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
THE FRANKLIN PAINT 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 1567. Complaint, Feb. 20, 1929—Decision, June 28, 1932

Where a corporation engaged in sale to trade and consuming public throughout the United States, of roof coating, and paints consisting largely of outside house paint for use upon houses and other buildings and properties; in offering its product through catalogues, letters, and other trade literature,

- (a) Described its said outside house paint as composed wholly of the best grades of white lead, zinc oxide, and linseed oil, with necessary color pigments, and driers, and as prepared from the finest raw paint pigments and oils, together with the necessary driers and coloring tints, and as composed only of the best and finest paint ingredients obtainable, through such statements in catalogues, color cards, etc., as "We guarantee that every gallon * * * is * * * prepared from the highest grade white lead, zinc oxide, linseed oil, necessary coloring pigments and driers * * *" "Nothing but the purest white lead, zinc oxide, linseed oil, and best materials * * *", "Only those materials that are used by every master paint maker when he wants to produce the finest possible colors, i. e., white lead, zinc, linseed oil, color pigments and driers * * *", "We guarantee that every gallon * * * is * * * prepared from the finest raw paint pigments and oils combined with the necessary driers and coloring tints * * *", "* * * made from the finest materials money can buy * * *".

Facts being said paint contained white lead and zinc oxide only in minor proportions, and formula and composition required and disclosed approximate pigment and vehicle content of 58 per cent and 42 per cent, respectively, and (1) pigment or solid content of 36 per cent titanox, 4 per cent lead sulphate, 20 per cent zinc oxide, 16 per cent barium sulphate and 24 per cent asbestine (with subsequent substitution of 12 per cent white lead for 4 per cent lead sulphate, and 8 per cent barium sulphate for 16 per cent, and (2) vehicle or liquid content of 87 per cent linseed oil, in fact diluted by addition of substantial quantities of soya bean oil;

With capacity and tendency to mislead, deceive, and induce purchasing public to buy said paint as and for the preferred and demanded high-quality product composed of the generally esteemed white lead, zinc oxide, and pure linseed oil, with necessary color pigment and drier, and of the best and finest raw paint materials obtainable, and with no such cheap, inert pigments as barium sulphate and asbestine, or oil other than pure linseed oil;

- (b) Represented itself in its catalogues, etc., as the manufacturer of the aforesaid paint, selling direct from factory to customer under a plan "so heartily welcomed by thousands and thousands * * * that to-day it requires this big million-dollar factory shown below to take care of our customers", and referred to its expert employees, elaborate facilities, plants, warehouses, etc., through such statements as "Fresh from the factory direct to you", "We guarantee that every gallon * * * is made in our own modern factory", "Every gallon * * * made from start to finish in our own big paint factory", "* * * made in one of the