

IN THE MATTER OF

L. F. CASSOFF, AN INDIVIDUAL, DOING BUSINESS
UNDER THE NAMES AND STYLES OF CENTRAL PAINT
& VARNISH CO., CENTRAL SHELLAC WORKS, AND
CUMBERLAND PAINT WORKSCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1698. Complaint, Oct. 2, 1929—Order, Sept. 20, 1932*

Consent order requiring respondent, his agents, etc., in connection with sale in interstate commerce of any paint dealt in by him, to cease and desist from advertising, representing, describing, branding or labeling the same (1) with the words "Purest Paint, 50% white lead, 50% zinc"; or (2) with the phrases "100% Pure Ready Mixed Paint, Zinc, Lead, Linseed Oil", or "100% Pure Lead and Zinc"; or (3) from otherwise misrepresenting "kind, class, or proportion of the ingredients" of his paint in advertising or on labels as in said order set forth and qualified.

Mr. Henry Miller for the Commission.

Mr. Meyer Kraushaar, of New York City, and *Mr. George Schachter*, of Brooklyn, N.Y., 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 L. F. Cassoff, an individual doing business under the names and styles of Central Paint & Varnish Co., Central Shellac Works, and Cumberland Paint Works, hereinafter referred to as respondent, has been and now 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. The respondent, L. F. Cassoff, an individual, has for five years last past been engaged, under the names and styles of Central Paint & Varnish Co., Central Shellac Works, and Cumberland Paint Works, in the manufacture and sale of paints and varnishes, having his principal factory and place of business in the Borough of Brooklyn, city and State of New York. In the course of his business he has solicited in the period named and solicits, orders for his products, including those hereinafter described, through the mail by letters and circulars, and by agents, from dealers and consumers in various States other than New York, and thereby

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has secured and secures orders from, and in fulfillment thereof has sold, shipped, and delivered, and sells and ships to, dealers and consumers located outside the State of New York, his products including those hereinafter described:

PAR. 2. Among his products so sold and shipped by respondent, as stated in paragraph 1, have been paints labeled as follows:

OUTSIDE AND INSIDE—PUREST PAINT

50% White Lead—50% Zinc—Pure Linseed Oil—Pure Turpentine—Best Dryers—

and a slight amount of Magnesium Silicate

to keep the paint from settling

Among his products so sold and shipped by respondent, as stated in paragraph 1, have been paints labeled as follows:

100% Pure

WALDORF

Ready Mixed

Zinc Lead

Paint

Linseed Oil

Respondent has circulated, and circulates, through the mails and through its agents, in soliciting orders from dealers and consumers located outside the State of New York, a color chart bearing in print on the front outside, the following:

WALDORF

100% Pure

Lead and Zinc

READY MIXED

PAINT

Waldorf Paints Stand the Test

CEPACO

Manufactured by

Central Paint & Varnish Works

Brooklyn, N.Y.

PAR. 3. The best commercial paints consist of two main elements, pigments or solids, such as lead, and a vehicle or medium, such as linseed oil. The best white paints, as known to the art and the trade and public, consist of the metallic substances, zinc oxide, carbonate of zinc and lead sulphate, pigments; and turpentine and linseed oil vehicles, in varying proportions. For tints and darker colors small amounts of earthy pigments are used. In cheaper paints, various earthy, nonmetallic substitutes for the metallic ingredients, zinc and lead, are used, such as magnesium silicates, litho-

pone and chalk. Such substitutes cost much less than zinc oxide or carbonate, or lead sulphate, and are much inferior to them in quality and for withstanding weather attacks. White lead and zinc are heavy substances, not in chemical combination with the linseed oil or other vehicle of the paint, and the addition of magnesium silicate will not prevent their "settling" while standing.

PAR. 4. The labels and printed matter set out in paragraph 3 are false and misleading, and have the capacity and tendency to, and do, lead dealers and consumers of paint, located in States other than New York, to believe that the paints so labeled and described by respondent are made of and contain only the metallic substances, lead and zinc, as the solid pigment ingredients, and to purchase the products of respondent so labeled in such belief; whereas, in truth and fact, the paints so labeled and sold by respondent do not consist wholly of zinc and lead as the solid or pigment ingredients, in equal or unequal proportions, but contain other and inferior substances as substitutes therefor.

PAR. 5. Respondent, in his business, is in competition with individuals, partnerships, and corporations which sell and distribute in interstate commerce paints, the pigments or solids of which consist wholly of lead and zinc in some form, and with individuals, partnerships, and corporations which sell and distribute in interstate commerce paints which consist in part of substitutes for lead or zinc and which do not represent their paints to consist wholly as to solids or pigments of zinc or lead.

PAR. 6. Said practices of respondent in the sale and distribution of its products in the circumstances and conditions are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition 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 coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission and respondent's answer that respondent waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding and consents that the Commission may make, enter, and serve upon him, without a trial, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the violations of law charged in the complaint; and

the Commission having duly considered the matter and being now fully advised in the premises,

It is ordered, That, in connection with or in the course of the sale or distribution of paint in interstate commerce, respondent L. F. Cassoff, his agents, representatives, servants, and employees cease and desist:

(1) From directly or indirectly causing any such paint to be advertised, represented, described, branded or labeled with the words "Purest paint, 50 percent white lead, 50 percent zinc", or with words, statements, phrases, or other representations of substantially the same effect, when the pigment of such paint is not in fact composed of 50 percent lead and 50 percent zinc.

(2) From directly or indirectly causing any of said paint to be advertised, represented, described, branded or labeled with the phrases "100 percent pure ready mixed paint, zinc, lead, linseed oil" or "100 percent pure lead and zinc" or with any other words, phrases, or representations to the effect that such paint is composed in its pigment of lead and zinc, unless in each instance the pigment of such paint is in fact composed wholly of lead and zinc.

(3) From also directly or indirectly using or causing to be used any statement, representation, or assertion as to the kind, class, or proportion of the ingredients of any such paint, in advertising matter or on the labels or containers thereof, except when such respective statement, representation, or assertion is true in fact.

It is further ordered, That respondent L. F. Cassoff shall, within 60 days after the service upon him 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 he has complied with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF

M. HARRIS

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

Docket 2027. Complaint, Apr. 13, 1932—Order, Sept. 20, 1932

Consent order requiring respondent to desist offering and selling in interstate commerce any fountain pen or other pen branded, described, or designated as "Schafner Lifetime Pen", or "Genuine Schafner Lifetime Pen", "Schafner", or "Schafner Pen", or by any other word or words simulating, resembling, or suggesting the word "Sheaffer."

Mr. James M. Brinson for the Commission.

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

PARAGRAPH 1. Respondent M. Harris is an individual who has been, and is engaged in the business of manufacturing, or buying the parts for, and assembling, fountain pens, and of selling the pens so manufactured, or assembled, in commerce among and between the various States of the United States. His principal place of business is in the city of Philadelphia and State of Pennsylvania. It has been, and is, the practice of respondent to transport, or cause to be transported, his product, when sold, to purchasers thereof located in the various States of the United States other than the State of Pennsylvania, or in other States of the United States than the State in which he has, at various times, maintained his principal office and place of business, in competition with individuals, partnerships, and corporations engaged in the sale of fountain pens in interstate commerce.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent M. Harris has offered for sale and sold, and now offers for sale and sells, fountain pens described as "Schafner Lifetime Pens" or "Genuine Schafner Lifetime Pens", or "Schafner Pen." Such fountain pens bear upon the clip attached to their cap the brand name "Schafner."

It has been and is the practice of respondent to sell his product, the so-called "Schafner Lifetime Pens" or "Schafner Pen", to, or through, department stores, drug stores, cigar stores, and other places of business similar in character and purpose, and to furnish such direct purchasers of his product with so-called advertising mats to be used by them for advertisements in local newspapers.

Such advertisements, so furnished the direct purchasers of his product by respondent M. Harris, have contained, and contain, such language as the following:

DISCONTINUED COLORS
of Genuine Schafner Lifetime Guaranteed
\$5 Self-filling Fountain Pens
on Sale at \$1

These pens are new and perfect. Guaranteed a lifetime. Just are discontinuing some of the colors. Has a 14-K solid gold, iridium point which cannot be bought for less than \$1.75 alone. Our supply is limited. We cannot fill any mail, telephone, or c.o.d. orders. Has the hard unbreakable barrel.

Respondent has caused to accompany his fountain pens so advertised, offered for sale and sold, a guarantee certificate, which, among other statements, contains the following:

LIFETIME GUARANTEE
GUARANTEE CERTIFICATE

NOTICE.—Fill this pen as directed, not your way. Be sure you have the complete point in ink. Not half the point. Open lever, don't pump it and let pen stand in ink ten seconds after you close lever. If pen flows too free, refill it.

This certifies that this fountain pen is guaranteed by us to be in perfect working order and absolutely free from any defects.

In the event of any dissatisfaction at any time return this certificate with your pen and 25 cents in stamps to the address below, NOT the store where you purchased this pen, and we will adjust same or give you a new one. It is important that you send 25 cents with the pen sent for packing and postage. All repairs will be made regardless of what conditions free for a lifetime. Send to

M. Harris
81 Pennsylvania Avenue
Somerville, Massachusetts

At the time when the particular guarantee certificate above described was issued by respondent, his place of business was at Somerville, Mass., from which place it was then his practice to transport, or cause to be transported, his product, when sold, to purchasers in various other States of the United States than the State of Massachusetts.

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His fountain pens, which respondent has caused and causes to be represented in advertisements in the local newspapers of communities in which his direct purchasers are doing business, as having 14-K solid gold, iridium point, which cannot be bought for less than \$1.75 alone, and which are represented as \$5 pens which are sold for \$1, thereby saving \$4 to the purchaser, have been and are sold by respondent M. Harris for \$9 per dozen.

PAR. 3. The W. A. Sheaffer Pen Co. has been for many years and now is, engaged at Ft. Madison, Iowa, in the manufacture of fountain pens and pencils and their sale in the various States of the United States, causing such products, when sold, to be transported from its said place of business to purchasers in other States of the United States than the State of Iowa. Its fountain pens and pencils have been for many years last past and now are, offered for sale and sold under the designation or name "Sheaffer", and in connection therewith W. A. Sheaffer Pen Co. has, for many years last past, furnished a lifetime guarantee with certain of its products. The products of W. A. Sheaffer Pen Co. have been and are of high quality, and for many years have been widely and favorably known to the purchasing public in the United States because of their intrinsic merit and of the extensive advertising, by means of which W. A. Sheaffer Pen Co. has brought its products and their distinctive qualities to the attention of the purchasing public. The lifetime guarantee has been used by W. A. Sheaffer & Co. over such a period of time, in connection with certain of its products, and there has been such extensive advertisement of the word "lifetime" in connection with the Sheaffer pen, that the expression "lifetime" used in connection with fountain pens has come to be associated in the minds of the purchasing public with the fountain pen generally and favorably known by the designation or name "Sheaffer", so that such expression now serves to signify or suggest the product of the W. A. Sheaffer Pen Co.

PAR. 4. The brand or trade name "Schafner" used by respondent for the designation of his fountain pens closely resembles and simulates the name "Sheaffer", and his advertisement and use of the expression "lifetime guarantee" resembles and simulates the practice of W. A. Sheaffer Pen Co. described in paragraph 3, with which the purchasing public has been familiar for many years. The acts and practices of respondent M. Harris, as described in paragraph 3 hereof, have had and have, and each of them has had and has the capacity and tendency to mislead and deceive, and such acts and practices have furnished and furnish, and each of them has furnished

and furnishes, the dealer customers or distributors of respondent with the means to mislead and deceive the public into the belief that the fountain pen offered for sale and sold as "Schafner Lifetime Pen" or "Genuine Schafner Lifetime Pen" or "Schafner Pen", is the product manufactured and sold by W. A. Sheaffer Pen Co. of Ft. Madison, Iowa, generally and favorably known as the "Sheaffer Lifetime Pen" or "Sheaffer Pen", and to induce purchase of the so-called "Schafner Lifetime Pen" or "Schafner Pen" in reliance on such erroneous belief.

The aforesaid practice of respondent has had and has the capacity and tendency to divert trade, and does divert trade to respondent from the said W. A. Sheaffer Pen Co. and from other competitors of respondent, particularly those selling fountain pens in interstate commerce of the class or type of fountain pens sold by respondent.

PAR. 5. The above and foregoing acts and practices of respondent are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in 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 complaint of the Commission and the answer of respondent wherein he refrains from contesting the proceeding and consents that the Commission may make, enter, and serve upon him an order to cease and desist from the violations of the law alleged in the complaint.

It is now ordered, That respondent, M. Harris, cease and desist, directly and indirectly, from offering for sale or selling, in interstate commerce, any fountain pen or other pen branded, described, or designated as "Schafner Lifetime Pen", or "Genuine Schafner Lifetime Pen", "Schafner" or "Schafner Pen", or by any other word or words simulating, resembling, or suggesting the word "Sheaffer."

It is further ordered, That respondent shall file within 60 days from and after service of this order, a report in writing, setting forth in detail the manner and form of its compliance therewith.

IN THE MATTER OF
SOUTHERN CALIFORNIA LAUNDRY OWNERS
ASSOCIATION ET AL.

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

Docket 1954. Complaint, May 26, 1931—Order, Sept. 21, 1932

Consent order requiring respondents to cease and desist from—

- (a) "Uniting or cooperating in a common course of action among themselves or among themselves and with others in a combination to prevent and restrain manufacturers of laundry machinery, equipment and supplies from freely selling and transporting their respective products or causing the same to be transported, from the various respective States of the manufacture thereof, to laundry owner customers located in California, not members of respondent associations or either of them"; and, pursuant to said combination, to cease and desist from—
- (b) "Using boycott, threats of boycott, either with or without other coercive methods, to persuade, induce, or compel said described manufacturers or any of them to refrain from selling said described customers or any of them, or to refrain from so selling except on unfair, discriminatory or prohibitive terms and conditions fixed by respondents;
- (c) "Seeking or obtaining information of sales, proposed sales or contracts for the sale by said described manufacturers of said products to the above described customers or any of them, in the furtherance of the said described combination;
- (d) "Persuading, inducing, or compelling said described manufacturers to break or cancel their contracts for the sale of their said products to the said described customers, or any of them, and from attempting so to do; and
- (e) "Using other cooperative and coercive means to carry out or make effective their said described combination."

Mr. Eugene W. Burr for the Commission.

Chapman & Chapman, of Los Angeles, Calif., for respondents, with whom appeared *Nichols, Cooper & Hickson*, of Pomona, Calif., for respondent J. L. Cathcart, individually and as member of executive committee of Southern California Laundry Owners Association.

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 each and all the parties named in the caption hereof, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of section 5 of said act, and states its charges in that respect as follows: