

## Complaint

## IN THE MATTER OF

## HIRES TURNER GLASS 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 1935. Complaint, Nov. 4, 1931—Decision, Sept. 26, 1933*

Where a corporation engaged in the manufacture and sale of mirrors, designated and advertised as "copper back", or "copper backed", or "backed with copper", products made by it under licensed process involving the covering of the reflecting medium with a mixture of shellac and copper dust, spread thereon by brush or spray, notwithstanding fact that (1) said products were not the more costly, expensive, durable and favorably known mirrors, long prior thereto generally understood by the trade and ultimate consumers from said terms as those in which the reflecting medium is covered with a protective coating consisting of a continuous film or sheath of solid metallic copper applied through the electro plating process, and (2) said applications did not result in the application to the glass of a solid continuous metallic copper coating or film;

With tendency and capacity to confuse, mislead and deceive the trade and members of the purchasing public as to the nature of manufacture of its aforesaid mirrors, and induce the purchase and use thereof in such erroneous belief, and divert trade to it from competitors engaged in the sale of ordinary or similar mirrors, and from competitors engaged in the sale of the genuine and more costly "copper back" or "copper backed" mirrors, and who do not misrepresent the kind, structure or mode of manufacture of their respective products:

*Held*, That such practices, under the circumstances set forth, were to the prejudice and injury of the public and competitors, and constituted unfair methods of competition.

*Mr. Harry D. Michael* for the Commission.

*Mullen, Mullen, Shea & Massey*, of Washington, D.C., 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 Pennsylvania corporation, engaged in the manufacture of mirrors and other glass products, and with principal place of business in Philadelphia, with misrepresenting product as to nature or manufacture, and advertising falsely or misleadingly in said respects, 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 aforesaid in sale of said mirrors to furniture manufacturers, contractors, builders, and other

users of mirror glass, advertises and describes as "copper back mirrors", "copper backed mirrors", "mirrors backed with copper", and by other similar designations, certain mirrors put upon the market by it within the last two years, notwithstanding the fact that said mirrors are not the preferred, genuine, copper back mirrors, sheathed with copper through the electrolytic process, as known to the trade and purchasing public from such designations, but are made in the usual way through placing a coating of silver upon the glass, and applying to such coating, by brush or other mechanical means, a mixture of copper dust and shellac.<sup>1</sup>

Said representations have the capacity and tendency to confuse, mislead, and deceive the trade and the public into the belief that respondent's mirrors are backed with a continuous sheath of solid copper, without regard to the method used, or that they are so backed with copper by the use of electrolysis, and to induce their purchase and use thereof in such mistaken beliefs, and to divert trade to it from competitors engaged in sale in interstate commerce of ordinary mirrors, and those engaged in the sale of the more costly, genuine "copper back" mirrors, whom it is enabled to undersell, while meeting, approximately, the prices of manufacturers of the ordinary mirrors; all to the injury and 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 upon the respondent, Hires Turner Glass Co., a corporation, charging said respondent with the use of unfair methods of competition in inter-

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<sup>1</sup> The process employed in making the genuine copper-back mirrors, as understood by trade and public, and the advantages associated with such mirrors, and the preference therefor, are alleged in paragraph 5 of the complaint as follows:

PAR. 5. That long prior to the time that respondent began to manufacture and sell said mirrors and to describe them as aforesaid, other manufacturers of mirrors had devised and used a method and mode of covering the silver on the backs of mirrors with a continuous sheath or layer of solid copper by the use of electrolysis, and such mirrors had been described by the manufacturers thereof and had become and are now known in the trade and by the purchasing public as "copper backed" or "copper back" mirrors. That mirrors backed with a sheath of copper by the electrolytic process as aforesaid came to be and are now known in the trade and among the purchasing public as mirrors that will not deteriorate as ordinary mirrors do and that resist the action of the atmosphere and climatic conditions, thus making them particularly suitable for use in places where they are subject to exposure to fumes, steam, moisture, and water. That many members of the trade and of the purchasing public prefer mirrors so covered by a sheath of solid copper for the purposes aforesaid to mirrors covered with copper dust and shellac as used by respondent.

state commerce in violation of the provisions of Section 5 of said act.

Respondent having entered its appearance and filed its answer to said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint and in opposition thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission and counsel for respondent having submitted briefs and having been heard in oral argument before the Commission, and the Commission, having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Hires Turner Glass Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, and has its factory and principal place of business in the city of Philadelphia in the State of Pennsylvania. Said respondent is now, and has been engaged for more than twenty years last past in the manufacture of mirrors and other glass products and in the sale thereof in interstate commerce in and among the various States of the United States, and said respondent causes and has caused its said products when so sold to be transported in interstate commerce from its said place of business in Pennsylvania to, into and through States of the United States other than Pennsylvania to persons, firms and corporations to whom or to which its said products are or have been sold.

PAR. 2. In the summer of the year 1930 respondent began to manufacture in commercial quantities and to sell in interstate commerce as aforesaid a type of mirror having a protective coating or backing consisting of a mixture of shellac and copper dust or powdered copper. Respondent continued to make and sell such mirrors as aforesaid in commercial quantities up to and during the hearings of this cause. A small quantity of such mirrors had been made by respondent in the fall of 1929. No general advertising was done by respondent in connection with said type of mirror until the spring or summer of 1930 when a large quantity of circulars or folders was distributed in and among the trade. At first respondent made said type of mirror by applying the mixture of shellac and powdered copper directly over the reflecting medium (silver nitrate). A coating of what is known in the trade as ordinary mirror

backing paint was then applied. Later respondent reversed the relative position of these coats as to a considerable portion of such type of mirrors made but also continued the said original method. Respondent applies the mixture of shellac and powdered copper with a brush but it may be applied with a spray.

Said mirrors are made by respondent under a license agreement with Peacock Laboratories, Inc. There are other licenses of Peacock Laboratories, Inc., using the same process. Respondent was one of the first, if not the first, of such licensees to use the Peacock process and to advertise and promote the sale of the product. In said folders previously referred to respondent described its said mirrors above described as "copper back mirrors", "copper backed mirrors" and "mirrors backed with copper." Said terminology was also used by respondent, its officers, agents and representatives in letters, invoices and other papers and communications and in conversations with the trade. Since the complaint herein was filed respondent has used the expressions "mechanically copper sealed nonelectrolytic" and "mechanically copper coated, nonelectrolytic", as well as the terms previously given, to designate its said mirrors.

PAR. 3. At the time respondent began to manufacture, advertise and sell its said mirrors which it described as "copper back" mirrors and similar designations, and prior thereto, there was on the market a type of mirror, known to and designated by a large and substantial part of the trade and purchasing public as "copper back" mirrors and "copper backed" mirrors which were, and are, entirely different composition, structure, and characteristics from respondent's said mirrors, as well as differing in process of manufacture. Said mirrors which had become so known are characterized by a protective coating on the back of the mirror of a continuous film or sheath of solid metallic copper which is adherent to the reflecting medium (usually silver nitrate). Such mirror backing is and has been made by the electrolytic process which is also known as the electroplating process. Mirrors of this type have been made in the United States, advertised and sold commercially in large quantities for various uses and purposes and in large sizes since 1925. Prior to that time there had been manufacture of such mirrors in this country to a more limited extent.

One such manufacturer has made such mirrors in this country for special uses for more than 40 years. Others had made and sold such mirrors since 1914. Some of such manufacture was for special uses, some experimental, and some for only a short time or for a few years. Moreover, mirrors of this type had been imported from abroad and sold in this country in large quantities from about the

year 1900 up to the period of the World War. Such importations and sale have continued in a lesser degree from said period up to the present time. Such mirrors were referred to and called generally in the trade as "copper back" mirrors or "copper backed" mirrors in references to the same in conversations, letters and other communications. Such use of the said terms included manufacturers, dealers, users and customers generally. Manufacturers and dealers in said type of mirror familiarized the trade, including retail dealers, architects, contractors, manufacturers of products using such mirrors, and ultimate consumers, with said terms by means of extensive advertising in various forms, correspondence, solicitation by salesmen and otherwise.

One large manufacturer of said type of mirror placed a sticker on the front surface of each such mirror made by it featuring the term "copper back." Such stickers were used by the thousands and mirrors on which they were placed were shipped to dealers and ultimately delivered to consumers in all parts of the country. The process of manufacture and nature of the product were explained in letters to representatives of said company in all parts of the United States and also in general advertising matter. This information was also passed on to members of the trade and customers by salesmen and agents so that the said terminology and general method of manufacture became known to the trade and customers of said company who dealt in or used such product. While another large manufacturer of said type of mirror used a trade-mark name to designate its said product, yet it was well known in the trade and among users of such products that such trade-mark name stood for the "copper back" mirror of that particular make. Moreover, in referring to said make of mirrors in conversation, correspondence, etc., the terms "copper back" or "copper backed" were commonly and generally used. The advertising matter of this company also described the general nature of the backing and, in some cases, the process by which it is made. In other instances the term "copper back" is used in connection with the trade-mark name. Said company also imported large quantities of such mirrors which were known, described and sold as "copper back" mirrors. Other manufacturers of this type of mirror used the same descriptive terms in the sale of their mirrors.

Said use of such terms, as well as knowledge of the general process of manufacture and the nature of the product was well established among a large and substantial portion of the trade and purchasing public who deal in and use such products at the time respondent and other licensees of Peacock Laboratories, Inc., began to manu-

facture, advertise and sell the type of mirror made by them and having thereon a protective coating of a mixture of shellac and powdered copper and at the time respondent and such licensees began to describe their type of mirror as "copper back" or by similar designations. Other terms are and have been used to describe "copper back" mirrors made by the electrolytic process of the protective copper backing thereof, such as "copper coated", "electro copper plated", "copper plated", "electro plated", "copper plating", "copper coating", "copper backing", "a thin sheet of copper", "copper sheathing" and "electro plated copper backed", but all such names are properly descriptive thereof either as a designation of the product or of the process of manufacture or both. However, none of such terms has been or is so generally or commonly used as the terms "copper back" or "copper backed."

PAR. 4. The terms "copper back", "copper backed", and "backed with copper" are aptly, truly and accurately descriptive of the mirrors made with a protective coating of a continuous sheath or film of copper deposited on the reflecting medium by the electrolytic process. Such backs are in fact solid metallic copper. Said terms are not aptly, correctly and accurately descriptive of the type of mirror made by spreading upon the back thereof a protective coating consisting of a mixture of shellac and powdered copper regardless of whether such coating is immediately next to the reflecting medium or separated therefrom by an intervening coating of ordinary mirror backing paint. Such a mixture of shellac and powdered copper does not form a solid metallic copper coating or film. The metallic element is not continuous nor are the particles of copper in metallic contact. Each particle of copper is surrounded by a film of shellac and no part of the copper is adherent to or in metallic contact with the reflecting medium. Such a mixture for such use is properly described as a "paint."

PAR. 5. Ordinary or standard mirrors are made by first placing upon the glass used a coating of silver nitrate or other material which forms the reflecting medium. Over this reflecting medium is then spread a thin film of shellac and over this is then applied one or more coats of what is known in the trade as ordinary mirror backing paint. Such mirror backing paint is also used on respondent's mirrors as aforesaid and also on the electrolytic "copper back" mirrors heretofore described. The electrolytic "copper back" mirrors require expensive and special equipment to make, and usually sell for a higher price than ordinary or standard mirrors. Respondent's said type of mirrors requires no special equipment and sells for

approximately the same price as ordinary mirrors or only slightly in excess thereof.

Prior to the time respondent and other licensees using said Peacock process began to manufacture such mirrors, the electrolytic "copper back" mirrors in and among a substantial part of the trade and purchasing public, acquired a reputation as being mirrors of high quality and long life and as being mirrors that would resist adverse atmospheric and climatic conditions for a much longer time than ordinary mirrors.

PAR. 6. From the time respondent began to manufacture and sell its said mirrors which it described as "copper back" and by similar designations, it has been in competition in the sale of said mirrors in interstate commerce with manufacturers and dealers in the ordinary type of mirrors above described and also with manufacturers of and dealers in "copper back" mirrors made by the electrolytic process. During such time other individuals, firms, and corporations in the various States of the United States are and have been engaged in the manufacture of said ordinary mirrors and said "copper back" mirrors made by the electrolytic process and in the sale thereof in interstate commerce, and such manufacturers and dealers have caused and do now cause their products, when sold by them, to be transported from various States of the United States to, into, and through States other than the State of origin of the shipment thereof.

PAR. 7. The representations of respondent as aforesaid in regard to its said mirrors have had and do have the tendency and capacity to confuse, mislead and deceive the trade and members of the purchasing public into the belief that such mirrors are backed with a continuous sheath or film of solid metallic copper which is adherent to the reflecting medium or that it is backed with such a film of copper deposited thereon by the electrolytic process, when in truth and in fact they are not so backed. Said representations of respondent have had and do have the capacity and tendency to induce members of the trade and of the purchasing public to purchase and use said product because of the erroneous beliefs as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of said ordinary mirrors and also of said "copper back" mirrors made by the electrolytic process.

PAR. 8. There are among the competitors of respondent in the sale of its said mirrors those who in no wise misrepresent the kind, structure or mode of manufacture of such competing products, and respondent's acts and practices as hereinbefore set forth tend to and do divert business to respondent from its competitors, to the substantial injury and prejudice of such competitors.

Order

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## CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings, are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and are 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 by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony in support of the charges of said complaint and in opposition thereto, briefs filed herein and oral argument by counsel for the Commission and for the respondent, and the Commission having made its findings as to the facts and its conclusion that said 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 ordered*, That respondent, Hires Turner Glass Co., a corporation, its officers, directors, agents, representatives, servants, and employees in connection with the sale, offering for sale, or distribution in interstate commerce of mirrors having thereon a protective coating consisting of a mixture of shellac and powdered copper, cease and desist from designating the same as "copper back" mirrors, "copper backed" mirrors, mirrors "backed with copper", or by other word, words or expression of the same meaning or like import.

*It is further ordered*, That respondent within 60 days from and after the date of the service upon it of this order shall file with the Commission a report in writing setting forth in detail the manner and form in which it is complying with the order to cease and desist hereinabove set forth.

## Complaint

## IN THE MATTER OF

## YOUELLS-PRIVETT EXTERMINATING CORPORATION

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

*Docket 2068. Complaint, Oct. 15, 1932.—Decision, Sept. 26, 1933*

Where a corporation engaged in the manufacture of vermin exterminator and in the sale thereof to druggists and other retailers, for resale to the ultimate purchaser, falsely represented through labels and other advertisements that said product would mummify carcasses of rats and mice and prevent offensive odors therefrom, and supplied retail customers with advertising of similar tenor for soliciting the business of the ultimate purchaser; with result that such customers bought said product in reliance upon the truth of such false representations, and repeated the same to the ultimate purchaser who bought in reliance upon the truth thereof, and with tendency to increase the sale of said product to the injury of competitors who did not pursue such methods, and whose ability to compete was lessened and injured thereby, and to mislead and deceive prospective purchasers as to effect, results and value of product in question, and divert trade to it from its competitors:

*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. PGad B. Morehouse* 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, a New Jersey corporation, engaged in the manufacture and sale of an alleged vermin exterminator under the names of "Rat Snap" and "Youells Original Rat Snap", and with principal place of business in Plainfield, with misbranding or mislabeling, advertising falsely or misleadingly as to nature of product, and offering deceptive inducements to purchase, in violation of the provisions of Section 5 of said act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid for more than two years last past, in the sale of said product principally to various druggists and other retail customers in the various States, through its labels and other published advertisements "represents to its prospective customers that the said product, when used according to directions printed upon the package, will mummify the carcasses of the killed rats and mice, prevent offensive odor from the same, and that cats and dogs will not touch it."