

IN THE MATTER OF

ACME SHELLAC PRODUCTS 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 2082. Complaint, Dec. 8, 1932—Decision, Nov. 6, 1933.

Where a corporation engaged in the manufacture and sale of shellac, shellac substitutes and other similar products, adopted the trade name "Shea-Lac" for shellac substitute, and sold said product in cans upon which had been stamped the words "Guaranteed 5 lbs. cut, an Acme Product, 'White Shea-Lac'", together with the words, in prominent lettering, "Acme Shellac Products Corporation", and, after a number of years and on containers intended for distribution and sale in interstate commerce, the words "shellac substitute", so lightly or carelessly stamped on some cans that they could not be seen after most careful scrutiny except by one who knew they had been placed thereon, and so inconspicuously stamped in others, as to be practically illegible; with capacity and tendency to mislead and deceive the purchasing public into believing said substitute to be the genuine and more costly shellac, and to induce the purchase thereof, and divert trade from and otherwise injure competitors, including manufacturers of the substitute product, who plainly and conspicuously mark the containers thereof as such:

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

Mr. Richard P. Whiteley for the Commission.

Frank & Julius Zizmor, of Brooklyn, N.Y., 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 New York corporation engaged in the manufacture of varnishes and sale and distribution thereof in the various States; and with principal place of business at Astoria, Long Island, N.Y., 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 respondent labels certain of its products sold in interstate commerce "Guaranteed Five Pound Cut Acme Product White Shea-Lac To be reduced with Alcohol Manufactured by 'Acme Shellac Products Corp.—New York, N.Y.—Boston, Mass.'"; notwithstanding the fact that said products so labeled are not made of genuine shellac gum dis-

solved in alcohol, the constituent elements or formula of shellac, as recognized and understood by the trade and purchasing public; with capacity and tendency to mislead and deceive the public and induce the purchase of such products in reliance upon the erroneous belief induced by such misrepresentations and statements, and to divert trade from and otherwise injure competitors, and/or with the effect of so misleading, deceiving, diverting, and injuring; 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, the Federal Trade Commission issued and served a complaint upon the respondent, Acme Shellac Products Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered its appearance and filed its answer to the said complaint, hearings were had before a trial examiner theretofore duly appointed and testimony was heard and evidence received in support of charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for final hearing before the Commission on complaint, answer, testimony and evidence received, and brief in support of the allegations of the complaint, and the Commission having duly considered the record and being now fully advised in the premises makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Acme Shellac Products Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at Long Island City in said State, and said respondent, for a number of years last past has been and is engaged in the manufacture of shellac, shellac substitutes, and other similar products, and in the sale and distribution of said products to purchasers thereof located in the various States of the United States other than the State of New York. During the aforesaid period respondent caused said shellac, shellac substitutes and other similar products when sold to be shipped from its place of business in Long Island City, in the State of New York, to purchasers thereof located in the various states of the United States other than the State of New York, and in the course and conduct of its said business re-

spondent was at all times herein referred to in competition with other corporations, and with firms, partnerships and individuals likewise engaged in the manufacture and sale and distribution in interstate commerce of shellac, shellac substitutes and other similar products.

PAR. 2. In the course and conduct of its aforesaid business respondent manufactured and sold both shellac and shellac substitutes. Shellac is made by dissolving in alcohol a shellac gum, imported from India. Shellac substitute is made by dissolving in alcohol an entirely different gum, called Manila gum. The Indian or real shellac gum is much more expensive than Manila gum, because of which, at times, real shellac has sold for more than twice as much as shellac substitutes, including the substitutes made by respondent. Even during the recent period of low prices, when the spread in price between the two products was considerably less than formerly, the pure or real shellac has sold for at least 25 percent more than shellac substitute. Shellac substitutes are used for the same or similar purposes as are real shellacs, and said substitutes are sold both in competition with shellac and with one another.

PAR. 3. Respondent was incorporated under the laws of the State of New York in 1923. It adopted at once as a trade name for its shellac substitute the word "Shea-Lac" and registered said name. Said shellac substitute was sold and distributed by respondent in cans upon which respondent had stamped the following wording:

Guaranteed 5 lbs. cut, an Acme Product "White Shea-Lac."

The name of respondent corporation, "Acme Shellac Products Corporation, also appeared in prominent lettering upon said cans. The sale and distribution of said shellac substitute was continued by respondent in receptacles so labeled from 1923 until 1930. Sometime during the year 1930 the respondent had stamped upon certain of its cans containing its said shellac substitute, intended for distribution and sale in interstate commerce, underneath the word "Shea-Lac" and in letters considerably smaller and less conspicuous than the said word "Shea-Lac" the words "shellac substitute." These words, "shellac substitute", were stamped upon said cans in such manner that they could easily be erased or obliterated.

Upon one of the said cans sold by respondent in interstate commerce in the State of New Jersey and purchased at a retail establishment in Newark, N.J., in July, 1932, the words "shellac substitute" had been stamped so lightly or carelessly that they could not be seen except after a most careful scrutiny by one who knew that they had been placed on the can. Upon others of respondent's cans in use since 1930, introduced as exhibits in this proceeding, the words

"shellac substitute" were so inconspicuously stamped as to be practically illegible. Respondent did not stamp, even in the inconspicuous and temporary manner heretofore described, the words "shellac substitute", upon any cans containing its shellac substitute, unless said cans were intended for shipment in interstate commerce.

PAR. 4. Other manufacturers of shellac substitutes, whose products are sold in the same trade area as are those of respondent, plainly and conspicuously mark on the containers of their said substitutes a statement that the products are shellac substitutes. One of said competitors labels its shellac substitute under the brand name or designation of "White Duralac", which words, as well as the accompanying words "a shellac substitute", appear plainly and conspicuously upon its containers.

PAR. 5. The use of the word "Shea-Lac" as a brand name or designation of a shellac substitute, unless accompanied by a word or words equally conspicuously and permanently stamped upon the vessels containing said substitute clearly indicating that such product is a substitute for genuine shellac, has the capacity and tendency to mislead and deceive the purchasing public into the belief that said shellac substitute is genuine shellac, and has the capacity and tendency to induce the purchase of respondent's shellac substitute and to divert trade from and otherwise injure respondent's competitors.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances as described in the foregoing findings are 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence introduced, and the brief of counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that 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",

Order

18 F.T.C.

It is now ordered, That respondent, Acme Shellac Products Corporation, and its officers, agents, representatives, and employees, in connection with the advertising, offering for sale and sale in commerce between and among the several States of the United States and in the District of Columbia of shellac, shellac substitutes, and other similar products, do cease and desist directly or indirectly from

Using the word "Shea-Lac", or any other word or words which in appearance or sound simulate the word shellac, alone or in conjunction with any other word or words to designate a product which is not made from shellac gum dissolved in alcohol or to designate a product in which shellac gum is not the principal and predominant element unless said word "Shea-Lac" or said other word or words be accompanied by the word "substitute", or by other apt and adequate words, in equally permanent and conspicuous lettering, clearly indicating that such product is a substitute for genuine shellac.

It is further ordered, That respondent, Acme Shellac Products Corporation, shall within 60 days after service upon it of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with and conformed to the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF

JACOB SHEPARD AND P. WIEGLER, COPARTNERS,
DOING BUSINESS UNDER THE TRADE NAME AND
STYLE OF PROSPERITY HAT COMPANY

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

Docket 2044. Complaint, June 6, 1932—Order, Nov. 7, 1933

Consent order requiring respondents, their agents, etc., in connection with the sale or offer of hats in commerce among the several States of the United States and in the District of Columbia, to cease and desist from selling or offering for sale men's old, worn, used, and discarded fur felt hats which have been cleaned and fitted with new ribbons, sweatbands and linings, unless and until there is stamped upon, affixed or attached to said hats, in a conspicuous place so as to be easily and readily seen, word or words clearly indicating that said hats are not new hats but are used and worn hats which have been cleaned and made-over (e.g., "second-hand", "used", or "made-over").

Mr. G. Ed. Rowland for the Commission.

Mr. Henry Duke, of Astoria, Long Island, N.Y., for respondents.

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 Jacob Shepard and P. Wiegler, copartners doing business under the trade name and style of Prosperity Hat Co., hereinafter referred to as respondents, have been and now are 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. Respondents, Jacob Shepard and P. Wiegler, are copartners doing business under the trade name and style of Prosperity Hat Co., having their office and principal place of business at 25 East Fourth Street, in the City of New York, State of New York, where they have been for more than 1 year last past engaged in the business of selling and distributing men's felt hats of the character and in the manner hereinafter mentioned, to jobbers and wholesale dealers located at points in the various States of the United States and the District of Columbia. Respondents cause said hats