

IN THE MATTER OF
EMMETT MCGOWAN AND ROY HALL, COPARTNERS,
DOING BUSINESS UNDER THE FIRM NAME OF
MCGOWAN & HALL

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

Docket 2144. Complaint, Dec. 29, 1933—Order, Mar. 5, 1934

Consent order requiring respondent Hall, his agents, etc., in connection with the sale, advertisement, and offer for sale in interstate commerce of spark plugs, to cease and desist sale of such reconditioned articles, under such brand or trade names of the manufacturer as "Champion" and "AC", without stating and representing to the purchasers that said articles are used or defective spark plugs, repaired or reconditioned for further service; and without plainly marking on the boxes, cartons or other containers in which the same are sold or offered for sale that said spark plugs have been repaired or reconditioned.

Mr. Edward E. Reardon for the Commission.

COMPLAINT

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, having reason to believe that Emmett McGowan and Roy Hall, copartners, doing business under the firm name McGowan & Hall, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect, as follows:

PARAGRAPH 1. The respondents Emmett McGowan and Roy Hall are residents of Minneapolis, Minn. Since on or about August 1, 1932, they have been and are now engaged in business as copartners under the firm name McGowan & Hall with a place of business at number 1102 East Twenty-fourth Street, Minneapolis.

PAR. 2. During all the times above mentioned respondents have been engaged in the course of their business as copartners, among other things, in the sale of spark plugs, used for ignition of gases in gasoline or gas engines, and the respondents have sold them and still sell them to purchasers located throughout the United States, dealers

who purchase for resale and members of the public, users and consumers of spark plugs; and the respondents have caused the spark plugs when so sold by them to be transported from their place of business in Minnesota, or State of origin of the shipment, to, into and through other States to the said purchasers.

PAR. 3. During all the times above mentioned other individuals, firms, and corporations, manufacturers and sellers of spark plugs located in various States of the United States, have been and are now engaged in the business of manufacturing and selling spark plugs to purchasers, dealers who purchase for resale and members of the public, users and consumers thereof, residing in States other than the State of the manufacturers and sellers or the State of origin of the shipment; and the said manufacturers and sellers, respectively, have caused the spark plugs, when so sold by them during said times, to be transported from the State of the seller or the State of origin of the shipment to, into and through other States to the purchasers.

PAR. 4. The respondents, during all the times above mentioned and referred to, have been and still are in competition in interstate commerce in the sale of spark plugs with the other individuals, firms, and corporations, the manufacturers and sellers of spark plugs mentioned and referred to in paragraph 3 hereof.

PAR. 5. Among the manufacturers and sellers of spark plugs referred to in paragraph 3 hereof are manufacturers who are and have been making and selling spark plugs, respectively, under the brands or trade names "Champion" and "AC" with which they are and have been branded or marked, and the spark plugs made and sold by the manufacturers of them under these brand names are and have been the best known of such products and most in demand by users or consumers and dealers in spark plugs.

During all the times above mentioned, the spark plugs, made and sold, marked or branded with these brands or trade names are and have been, nearly all of them, sold by the manufacturers and, to a large and substantial amount or extent, resold by dealers in interstate commerce as set forth in paragraph 3 hereof; and the business of the sale of these spark plugs in interstate commerce constitutes and has constituted a very substantial part of the entire business in the sale of spark plugs in the United States during said times.

PAR. 6. The spark plugs sold by the respondents, referred to in paragraph 2 hereof, were and are substantially all of them spark plugs that had been previously sold by the manufacturers and used by members of the public under the brands or trade names "Champion" and "AC" until they had become outworn by use or were defective and in an unserviceable or unfit condition for sale or for further use as spark plugs; and these outworn or unserviceable spark

plugs the respondents made a practice of obtaining, at nominal cost, in considerable quantities from garage keepers, junk dealers, or similar sources of supply, as discarded or scrapped material, and then repaired or reconditioned them for further use and sale as spark plugs; and respondents sold them as set forth in paragraph 2 hereof with the brands or trade names on them, which are mentioned in paragraph 5 hereof, without disclosing to purchasers that the same were used or defective spark plugs, which had been repaired or reconditioned for further service or use as spark plugs; and the sale of such spark plugs constituted the greater part of the business of the respondents in the sale of spark plugs.

PAR. 7. During the times above mentioned and referred to the respondents in connection with the sale of the spark plugs mentioned and referred to in paragraphs 2 and 6 hereof, have displayed at their place of business a sign on which is printed the following:

Guaranteed AC and Champion
Spark Plugs
35¢ each \$28 per hundred

and the respondents and their salesmen during said times have also orally and by means of business cards distributed by them among dealers and the public represented to purchasers and prospective purchasers of spark plugs as follows:

Guaranteed AC and Champion
Spark Plugs
For All Cars and Trucks

PAR. 8. The sale by the respondents of spark plugs under the brand names "Champion" and "AC" which they reconditioned and repaired from old and used spark plugs as set forth and which respondents represented as guaranteed "AC" and "Champion" spark plugs, without disclosing that the same were outworn or otherwise defective spark plugs that respondents had repaired or reconditioned, had the tendency and capacity to mislead and deceive the purchasers, dealers and users, and they have misled and deceived dealers and users of spark plugs into the belief that the spark plugs sold by the respondents were new and in the same condition they were in when made and sold by the manufacturers of them, and in reliance upon such belief into purchasing them from respondents instead of purchasing from the manufacturers or from dealers, competitors of respondents, mentioned and referred to in paragraphs 3 and 5 hereof, new and unused "Champion" and "AC" spark plugs sold by said competitors in interstate commerce.

The sale of repaired or reconditioned spark plugs under the brands or trade names "Champion" and "AC" by the respondents in interstate commerce under and in accordance with the practices of the respondents as set forth above has diverted trade from respondents' competitors and has wrongfully and unduly restrained the interstate commerce and trade of respondents' competitors in their businesses in the sale of spark plugs.

PAR. 9. The above acts and things done and caused to be done by the respondents are each and all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the meaning and intent 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

Pursuant to the provision of an Act of Congress approved September 26, 1914 (38 Stat. 717) the Federal Trade Commission issued a complaint against the respondents, Emmett McGowan and Roy Hall, copartners, doing business under the firm name of McGowan & Hall, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. With the complaint there was served upon respondent Roy Hall a copy of the Commission's Rules of Practice. Said Rules of Practice with respect to answers provide, among other things, as follows:

III. ANSWERS

(2) In case respondent desires to waive hearings on the charges set forth in the complaint and not to contest the proceedings, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that the respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint, to waive a hearing thereon, and to authorize the commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, to make, enter, issue and serve upon respondents:

(a) In cases arising under section 5 of the act of Congress approved September 26, 1914, * * * an order to cease and desist from the violation of law charged in the complaint.

Whereupon, On January 29, 1934, the respondent Roy Hall filed his answer to said complaint. Subsequently, to wit, on March 2, 1934, the said respondent Roy Hall filed his amended answer in

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which he consented that the Commission might make, enter and serve upon him an order to cease and desist from the violations of law alleged in the complaint.

Whereupon, Pursuant to its Rules of Practice, the Commission finds that said amended answer is an admission by the said respondent Roy Hall of all the allegations of the complaint and a waiver of hearing thereon and authorizes the Commission without trial, without evidence and without findings as to the facts or other intervening procedure to make, enter, issue and serve upon said respondent Roy Hall an order to cease and desist from the violations of law alleged in the complaint. The Commission being fully advised in the premises,

It is now ordered, That respondent, Roy Hall, his agents, employees and representatives in connection with the sale and the advertising and offering for sale in interstate commerce of spark plugs, used for ignition of gas in gasoline or gas engines,

Cease and desist from the sale of spark plugs, sold under manufacturers' brands or trade names such as "Champion" and "AC" that have previously been in use and have been discarded from use because outworn, defective and unserviceable and that have been repaired or reconditioned for further service as spark plugs, without stating and representing to the purchasers that the spark plugs are used or defective spark plugs, repaired or reconditioned for further service; and without plainly marking on the boxes, cartons or other containers in which the said spark plugs are sold or offered for sale that the said spark plugs have been repaired or reconditioned.

It is further ordered, That said respondent, Roy Hall, within 30 days after the date of service on him of this order shall file with the Commission a report in writing setting forth in detail the manner and form in which he is complying and has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

NORTHERN FRUIT AND PRODUCE CO., NATHAN RUBEN,
TED E. WOLFE, LEE W. WOLFE, GROWERS' PRODUCE
EXCHANGE, JACK RUBEN, AND L. G. WILLIAMSCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2115. Complaint, Oct. 5, 1933¹—Decision, Mar. 8, 1934*

Where two corporations dealing in seed potatoes and three individuals, incorporators, employees or officers of one or both of said corporations as the case might be,

- (a) Labeled the bags thereof with tags which set forth that the contents were fully described in Federal Inspection Certificate No. (giving it) now on file at U.S. Department of Agriculture, Washington, D.C., and thereby, with intent to deceive, falsely represented that said potatoes had been competently and disinterestedly inspected, while growing in the field, by or under the auspices of a Federal agency, by which it had been certified that they were free from "dwarf", "running out", "mosaic", and other deleterious diseases, determinable by such inspection;

The facts being that the particular inspection referred to was not that immediately above described, or an inspection made under supervision of an accredited Federal or State institution or organization, as had come to be understood by the word "certified", through the practice of inspecting and certifying, under official auspices, seed potatoes in seed potato growing states, and the efforts of state and local organizations and educational institutions and state and national agencies in widely disseminating and stressing the value of planting such potatoes certified as "free" from said diseases, but was one, made in response to their request, for condition only, or for condition, size, quality, and grade, as the case might be,

With result that prospective purchasers bought said potatoes as and for those inspected and certified as above set forth, and paid higher prices therefor than they otherwise would have done; and

- (b) Falsely represented to prospective purchasers that they were selling and shipping them seed potatoes designated by Federal Inspection Certification as "U.S. No. 1 grade" and that the potatoes in said shipments were true to variety;

With result that their said representations were passed on to, through and by the various buyers, commission merchants, middlemen, wholesalers, jobbers and chain stores, as aforesaid, to the ultimate purchasers who, believing and relying thereon, purchased and planted seed potatoes productive of inferior crops, they were enabled to sell their said so-called certified seed potatoes at a greater profit than was obtainable by competitors, who do not make such misrepresentations, and were unfairly enabled to undersell competitors, who had had their potatoes field-inspected, at greater cost, by competent, disinterested persons under supervision of accredited national or state associations or institutions, and who, after paying reasonable

¹ Amended and supplemental.