

IN THE MATTER OF
TUTTLE'S TITE-ON CEMENT 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 2133. Complaint, Dec. 5, 1933—Decision, Mar. 19, 1934

Where a product correctly termed vitreous enamel, and consisting of a glass manufactured with the same ingredients, and in much the same manner, as glass, but with the surface appearance of porcelain, though not true porcelain, long since developed by ceramic manufacturers, had come in recent years to be so widely and continuously advertised by refrigerator and other manufacturers using vitreous enamel surfaces on their products, as porcelain enamel finish, that vitreous enamel surfaces had widely come to be accepted and understood by such manufacturers and the consuming public as "porcelain enamel"; and thereafter a corporation engaged in the manufacture of a thin, cementlike material intended and sold for use as a paint or lacquer in finishing or surfacing refrigerators, tables, chairs, and various other articles, so as to simulate in appearance that kind of surface or finish which had come to be known to the general public as "porcelain enamel", as aforesaid, and in the sale thereof to manufacturers, wholesalers, and retailers,

Designated said material on labels and in advertising as "C. S. Porcelain", and in circular letters addressed and mailed to prospective purchasers featured said designation, and the word "porcelain", through such statements as "We have been successful in developing an air hardening Porcelain", etc., "This Porcelain is not poisonous", etc., "This Porcelain bakes at a low temperature", etc.;

Notwithstanding fact that said preparation, which contained not to exceed one percent of silica and alumina, main constituents of clay (chief ingredient of true porcelain), was neither that product known to manufacturers and consumers as porcelain or porcelain enamel, or generally accepted by them as such and did not produce a surface having the equivalent desirable characteristics of a porcelain enamel surface, as respects resistance to heat, abrasion, washing solutions, and fruit acids;

With the result that members of the consuming public purchased articles such as refrigerators, table tops, and others finished and surfaced with said "C. S. Porcelain" as and for articles finished with porcelain enamel, and it passed on to its immediate customers the means of receiving the ultimate consumer, and with tendency to mislead and deceive not only purchasers and prospective purchasers of its said product, but purchasers and prospective purchasers of articles surfaced and finished therewith by others in the belief that said product and articles had the same or equivalent characteristics as genuine porcelain or porcelain enamel, and thereby to divert trade from and otherwise injure 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, an Illinois corporation engaged in the manufacture of a cementlike material for use in surfacing refrigerators, tables, etc., so as to simulate the appearance of "porcelain enamel", and in the sale of such material to manufacturers, wholesalers and retailers, and with principal place of business in Chicago, with advertising falsely or misleadingly and misbranding or mislabeling as to nature of product, 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 designates its said product as "C. S. Porcelain", and uses the word "porcelain" in describing the same, notwithstanding fact that said product is neither a genuine porcelain, nor a porcelain enamel as the latter term has come to be understood, in recent years, through widespread usage; with effect of misleading and deceiving not only prospective ultimate purchasers of said product, but also consumer purchasers of articles surfaced and finished therewith, into the erroneous belief that product in question and surface or finish of said articles have the same desirable characteristics as porcelain or porcelain enamel, or equivalent characteristics, and into purchasing the same in such erroneous belief, and of passing on to immediate customers the means of deceiving the ultimate consumer, and with capacity and tendency so to mislead and deceive purchasers and prospective purchasers, of said product or articles, as aforesaid, and thereby to divert trade from and otherwise injure competitors; all to their prejudice and that of the public.¹

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 on the 5th day of December, 1933, issued its complaint against the respondent herein, Tuttle's Tite-On Cement Co., a corporation, charging said respondent with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act. Said complaint was duly

¹ The allegations of the complaint are set forth substantially verbatim in the findings, respondent having defaulted by reason of its failure to appear or answer, as set forth below.

Findings

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served upon said respondent on the 7th day of Dec., 1933. Attached to said complaint and served upon respondent as aforesaid was a notice fixing the 12th day of Jan., 1934 and the office of the Federal Trade Commission in Washington, D.C., as the time and place of hearing upon the charges set forth in said complaint. Said notice further notified said respondent that an answer to said complaint would be required to be filed with the Commission on or before said date for hearing and that upon failure to appear or answer the following provisions of the Rules of Practice adopted by the Commission would be applicable, to wit:

Failure of the respondent to appear or to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Said respondent having failed either to appear or to file answer to the complaint herein, it is hereby found and adjudged to be in default by reason of such failure to appear or to file answer.

Thereupon, This proceeding came on for hearing by the Commission on said default and the Commission having duly considered the matter and being fully advised in the premises, finds, pursuant to said Rules of Practice, that the allegations of said complaint are true and that respondent has waived hearing on the charges set forth herein. The Commission further finds that this proceeding is to the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 4507 Ravenwood Avenue, in the city of Chicago, State of Illinois. Said respondent trades under its own corporate name.

Respondent is now and for more than one year last past has been engaged in the manufacture and sale to manufacturers, wholesalers and retailers of a product known and designated by it on its labels and in its advertising matter as "C. S. Porcelain", a thin cement-like material intended and sold for use as a paint or lacquer in finishing or surfacing refrigerators, tables, chairs, and various other articles in such manner as to simulate in appearance that kind of surfacing or finishing which has come to be known to the general public as "Porcelain Enamel."

PAR. 2. Respondent causes its said product "C. S. Porcelain" when so sold by it to be transported from the State of Illinois into

and through various other States of the United States to the purchasers hereof and in the course and conduct of its business, as aforesaid, is in competition with various other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of surfacing materials, lacquers, varnishes, paints, enamels, porcelains and porcelain enamels.

PAR. 3. Approximately one hundred years ago ceramic manufacturers developed a product that could be fused on to a metal base, which product was substantially the same as a product now correctly termed vitreous enamel which is a glass manufactured with the same ingredients and in much the same manner as glass and having the surface appearance of porcelain. True porcelain is a ceramic product composed of (approximately) 40 percent kaolin or china clay, 10 percent ball clay, 25 percent feldspar, and 25 percent potter's flint, and is fired or baked at temperatures varying between 2,300 and 2,400 degrees Fahrenheit, whereas vitreous enamel is a coating which is put on refrigerators, bath tubs and tables over a metal base, usually iron or steel, and is not a true porcelain. Although vitreous enamel is a ceramic product, there is little in common between porcelain and vitreous enamel. However, for approximately nine years last past, refrigerator and other manufacturers using vitreous enamel surfaces (the principal ingredient of which is silica, which is found in kaolin or china clay, feldspar, ball clay or quartz) on their products have so widely and continuously advertised their product as having a porcelain enamel finish that such vitreous enamel surfaces have widely come to be accepted and understood by such manufacturers and the consuming public as "porcelain enamel." Such porcelain enamel is sprayed on the metal to be treated and fused thereon at a temperature of from 1,600 to 2,000 degrees Fahrenheit, producing a hard, durable finish which is resistant to heat, fruit acids and washing solutions, and which has various and divers other desirable characteristics. Respondent's product "C. S. Porcelain" may be applied either by a process permitting air-hardening or it may be baked upon the surface to which it is applied at a temperature of about 128 degrees Fahrenheit. In such a product are both silica and alumina, the main constituents of clay, but in quantities not exceeding one percent of the total compound; it is not a material generally accepted or designated by manufacturers and consumers as porcelain or porcelain enamel, nor is it known to them as such; when applied to a surface it does not produce a surface equivalent in desirable characteristics to a porcelain enamel surface, namely, it is not so resistant to heat, abrasion, washing solutions and fruit acids; and it is neither a porcelain nor a porcelain enamel.

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PAR. 4. Respondent's methods of sale are as follows: It forms contact with its customers and prospective customers through the medium of circular letters addressed and mailed to prospective purchasers. In and through such medium the following, among other similar statements and representations, were and are used and made by respondent in the sale and the attempted sale of its product "C. S. Porcelain":

We have been successful in developing an airhardening *Porcelain* which dries, dust proof, from five to ten minutes. Can be sprayed, successfully, on enamel where it is discolored by acids.

This *Porcelain* is not poisonous, has no odor, does not taint food, therefore, it can be, successfully, sprayed on the interior of electrical refrigerators. We manufacture it in white and all colors. It is not porous, therefore, it can be washed with just a damp cloth or with soap and water. This is manufactured in three effects—a flat finish, a satin finish and a lustrous finish. It is durable and reasonable in price.

This *Porcelain* bakes at a low temperature. At 120 degrees in forty-five minutes. When used on metal it requires a primer. We furnish a demonstration or sample as the case may require.

C. S. *Porcelain* is, especially, recommended for refinishing used refrigerators. It is *not necessary to remove the old finish*, sand surface of box, lightly, if the surface is chipped in spots, we recommend "*Tuttle's Quick Set*" for filling in these chipped places, then sand these spots and you are ready to spray the entire refrigerator with "*Tuttle's C. S. Porcelain*." This work can be done in the apartment with a portable spray equipment or in your shop.

PAR. 5. The statements and representations of respondent as described in paragraph 4 herein are false and misleading, among other particulars, in that:

(1) Respondent's product contains not exceeding one percent of silica and alumina, the main constituents of clay, whereas true porcelain is a ceramic product composed of approximately 40 percent of kaolin or china clay, 10 percent of ball clay, 25 percent of feldspar and 25 percent of potter's flint;

(2) Respondent's product is not known to manufacturers and consumers as porcelain or porcelain enamel, nor generally accepted by them as such;

(3) Respondent's product upon application does not produce a surface equivalent to the desirable characteristics of a porcelain enamel surface in that it is not so resistant to heat, abrasion, washing solutions and fruit acids; and

(4) Respondent's product is neither a porcelain nor a porcelain enamel.

PAR. 6. The statements and representations described in paragraph 4 hereof are false and misleading in that the members of the consuming public as a direct result of said representations purchase

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finished products such as refrigerators, table tops, and other articles which have been finished and surfaced with respondent's said "C. S. Porcelain" in the belief that said articles are finished with porcelain enamel, when such is not the fact. By the use of the false and misleading representations appearing in its circulars, as aforesaid, respondent passes on to its immediate customers the means of deceiving the ultimate consumer. Such false and misleading representations of respondent are further calculated to and have the tendency to mislead and deceive not only the purchasers and prospective purchasers of respondent's said product but likewise the purchasers and prospective purchasers of articles which have been surfaced and finished by others with respondent's product into the erroneous belief that said product, and the said articles surfaced and finished therewith, have the same or equivalent characteristics as genuine porcelain or porcelain enamel, when such is not the fact, thereby tending to divert trade from and otherwise injure competitors of respondent.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in interstate 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 duly heard by the Federal Trade Commission upon the record, 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 now ordered, That respondent, Tuttle's Tite-On Cement Co., a corporation, its officers, agents, representatives, and employees, in connection with the advertising, offering for sale or sale in interstate commerce and in the District of Columbia of the product designated by respondent as "C. S. Porcelain" and in connection with the advertising, offering for sale or sale in such commerce of any other product of substantially similar composition or content do cease and desist from using the word "Porcelain" or the words "Porcelain Enamel"

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either standing alone or in connection or conjunction with the letters "C. S." or with any other letters, word or words.

It is further ordered, That the respondent within 60 days from and after 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

QUAKER CITY CHOCOLATE & CONFECTIONERY
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 1773. Complaint, Mar. 11, 1930—Decision, Apr. 3, 1934

Where a corporation engaged in the manufacture and sale of candies, including assortments composed of, (a) chocolate covered penny candies, of uniform size and shape, and (b) larger pieces or articles of merchandise, acquisition of which, as prizes, without further charge, was determined by ultimate purchaser's chance selection of one of a relatively few of said chocolate covered candies, the enclosed concealed centers of which differed in color from that of the majority,

Sold such assortment to jobbers and wholesalers, in competition with concerns who do not offer and place in the hands of others additional candy or merchandise, to be given to purchasers by lot or chance, and in competition with candies, a substantial amount of which is sold by retailers without any such immoral scheme or device connected therewith, and sale of which is adversely affected by that of the candy with the lottery or gaming feature;

With result that many of the consuming public were induced to purchase its candies in preference to those of competitors because of the chance of securing certain pieces or other merchandise, free of charge, competitors who do not follow such a practice were put to a disadvantage, and trade was diverted from them to it and others using similar methods, gambling, and especially among children, was encouraged, a chance or lottery, instead of candy was merchandised, retailers were provided with the means of violating the laws and public policy of many of the States in selling and distributing candy by lot or chance, the industry was injured, and freedom of fair and legitimate competition therein was restrained and impaired:

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

Mr. Henry C. Lank and Mr. G. Ed. Rowland 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