

Syllabus

IN THE MATTER OF
THE ADAMS PAINT COMPANY

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

Docket 1961. Complaint, June 18, 1931—Order, Apr. 24, 1934

Consent order requiring respondent corporation, its officers, etc., in connection with the sale and distribution of paints and paint products in commerce, to cease and desist, as in such order specified and qualified, from directly or indirectly making or causing to be made any false representations, statements, or assertions, in its advertising or otherwise, to the effect that—

- (a) Its products contain no inert material or titanox, barium sulphate, siliceous matter, calcium carbonate, or asbestine but are composed wholly or principally of white lead, zinc oxide, or linseed oil and/or a secret ingredient not generally known to the trade or competitors, discovery of which by its chemists, after years, constituted one of the greatest discoveries of the twentieth century, and gave its said products superior qualities and advantages, not otherwise available, and its chemists test every gallon of paint and/or material used, and its said paints have stood up under the severest kinds of tests for years;
- (b) It manufactures its said products, or owns, operates, or controls factory or other equipment or facilities for so doing, and sells and distributes the same direct from the manufacturer, without the intervention of middlemen, at factory prices, which are less than those at which comparable products may be had or purchased from competitors or retail stores, or through other channels, with savings amounting to \$1 or \$2 a gallon, or 40 percent, accruing to purchasers, unless and until, as long as its products are made by a certain company, which directly or indirectly owns or controls its stock, it fully and prominently disclose such facts and relationship in conjunction with such representations, assertions and statements;
- (c) Its factory is a million-dollar one, or it is a million-dollar corporation, long engaged in the manufacture or sale of paints and paint products, with a million-dollar business, and that manufacturing equipment, or factory buildings depicted or referred to, belong to or are operated by it, or bear its name, and that it maintains and operates a chemical laboratory and staff, which tests every gallon, etc., as aforesaid, and it has facilities for purchasing and storing required raw materials in large quantities, and does so purchase and store; and
- (d) It has used and successfully tested the roof coating dealt in by it for many years, and such product is fireproof and will withstand 1,200 degrees of heat without having its serviceableness impaired or destroyed.

Mr. Henry Miller for the Commission.

Complaint

19 F.T.C.

Squire, Sanders & Dempsey and Mr. Samuel Doerfler of Cleveland, Ohio, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that The Adams Paint Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of the 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", and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, issues this its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Adams Paint Company, is a corporation organized in the year 1924 and existing under and by virtue of the laws of the State of Ohio, having its principal office and place of business in the city of Cleveland in said State. It is and for more than three years last past has been engaged in carrying on and conducting, in general competition, the business of selling and distributing paint, painting materials and liquid roof coating to the purchasing and consuming public throughout the United States by the methods and means as in this paragraph set forth. Respondent advertises, offers for sale and sells its said merchandise (a) through and by means of advertisements thereof published by it from time to time in newspapers, magazines, and similar periodicals of general circulation among the purchasing public throughout the United States and in various sections thereof; (b) through and by means of salesmen and agents who, in respondent's employment and on its behalf, offer its said merchandise for sale to, and solicit purchase orders therefor from, customers and prospective customers, the purchasing public, throughout the various States of the United States; and (c) through and by means of other advertising matter or trade promotional literature, to wit, catalogs, circulars, letters, pamphlets, leaflets, and similar printed or written matter, in which respondent advertises, represents, and describes its business and merchandise, and offers said merchandise for sale, and which advertising matter it causes to be sent and distributed from time to time from its place of business in Cleveland, Ohio, to its salesmen and agents, and to its customers and prospective customers throughout the several States of the United States. In response to and as a result of respondent's aforesaid advertising, solicitation and offering for sale of its merchandise, numerous pur-

chasers throughout the various States of the United States are thereby induced to purchase and do purchase said paint, paint materials and roof coating from respondent; and in so purchasing cause their respective purchase orders for said products to be transmitted by mail and by respondent's salesmen and agents and otherwise from their respective points of location in the several States of the United States to, and which orders are received by, respondent at its place of business in Cleveland, Ohio. Pursuant to said purchase orders for its merchandise and in making distribution thereof to its customers, respondent causes the respective parcels or lots of its paint, paint materials and roof coating so sold by it and purchased by its customers to be shipped, transported, and delivered from Cleveland, Ohio, in, through and into the State of Ohio and the various other States of the United States to the respective purchasers thereof residing or domiciled in such several States. In carrying on its said business respondent maintains and has maintained a constant current of commerce in its said merchandise between the State of Ohio and other States of the United States. In the course and conduct of said business respondent is and for more than three years last past has been engaged in interstate commerce, and in direct active competition therein with many individuals, partnerships and other corporations which are and for many years last past have been engaged in the business of selling and distributing to the purchasing public competitive paints, paint materials, and roof coating in commerce in, between, and among the several States of the United States.

PAR. 2. In and through the means and methods used by respondent in advertising, offering for sale, and selling its paints, paint materials, and roof coating, as hereinabove set forth, and for the purpose and with the effect of inducing and causing the purchasing public to purchase said merchandise from it, respondent causes, and during and throughout a period of more than three years last past has caused, to be made to the purchasing and consuming public certain representations, statements and assertions of the following effect and purport:

(1) That respondent's exterior house paint contains only such raw materials or ingredients as are the finest that money can buy and the best ingredients known to the paint manufacturing industry for the manufacture of exterior house paint; that respondent's said paint is the very best grade and quality of paint that can be manufactured regardless of cost or ingredients used; that the pigment of said exterior house paint, exclusive of necessary coloring material, is composed wholly of white lead, zinc oxide, and a secret in-

gredient; that the nonvolatile part of the vehicle or liquid portion of said paint is pure linseed oil; that said paint contains, and that said so-called secret ingredient is, a secret paint ingredient and is therefore not generally known or available to the paint manufacturing industry or to respondent's competitors; that said so-called secret ingredient was discovered by respondent's chemists; that respondents's chemists spent five years in making such discovery; that said so-called secret ingredient is one of the greatest discoveries of the twentieth century and gives to respondent's paint superior qualities and advantages which purchasers cannot procure in the use of any paints of other manufacturers.

(2) That respondent is the manufacturer of said merchandise which it markets, and in its sale and distribution thereof acts as a manufacturer and not as a middleman or dealer; that it owns, operates, and controls a large modern paint factory and grinding and mixing machinery or vats and other manufacturing facilities and equipment in and by which it manufactures all of its paints and other products which it sells and distributes; that its paint factory is a million-dollar factory, and that it owns and operates manufacturing equipment and facilities of the value of \$1,000,000; that its factory consists of a large building or buildings as shown in pictorial representations in its advertising matter, and that such buildings or premises bear in large and conspicuous letters respondent's name "The Adams Paint Company";

(3) That respondent maintains and operates an up-to-date chemical laboratory with a staff of chemists; that every gallon of its exterior house paint is tested in its own laboratory; that chemists in respondent's employ test in such laboratory the purity and quality of the raw materials purchased by respondent and used by respondent in the manufacture of its merchandise; that respondent's exterior house paint has stood up under the severest kind of tests for twenty-two years; that respondent owns and operates the facilities for, and is in a position to obtain the advantages to be derived by, purchasing in large quantities the raw materials from which its merchandise is manufactured; that it does purchase said raw materials in large quantities, to wit, in ten to twenty carload lots.

(4) That respondent is a million-dollar corporation; that it has carried on and conducted its aforesaid business since the year 1906 and has been engaged in business and in manufacturing paint and liquid roofing for more than twenty years, to wit, twenty-four years, twenty-five years, twenty-six years; that respondent does an annual business in its said merchandise to the extent of a million dollars or

more; that it sells over a million gallons of paint a year, and that its business is the largest of its kind in the United States.

(5) That its prices at which respondent sells its said merchandise are factory prices or manufacturer's prices and are not dealer prices or the prices of a dealer; that its said prices do not include, contain, or embrace any costs, profits, or other charges or expenses of any middleman or of any wholesaler, jobber, retailer, broker, traveling salesman, or dealer, and that respondent's customers, by purchasing from respondent, save to themselves such costs, profits or other charges; that therefore its prices for its paint are 40 percent less, and from \$1 to \$2 per gallon less, than the prices at which similar paints of as good quality may or can be purchased by the public from, or are sold to the public by respondent's competitors and by paint dealers generally.

(6) That respondent's roof coating, designated Griptite, is sold and intended by respondent for use and application on, and for the repair of, old and leaky roofs of all kinds, to wit, metal, shingle, and composition, and that when applied to such roofs will without necessity of reapplication render such roofs waterproof, weather-proof and impervious to wind, snow, sleet, and rain, for a period of ten years; that said roof coating in the actual service of the consuming public has given, and will give satisfactory service for a period of ten years on the purposes and uses for which it is intended and sold by respondent; that said Griptite has been in use and successfully tested for 26 years; that said Griptite is fireproof to the extent that about 1,200 degrees of heat will not impair or destroy it or otherwise affect its serviceableness.

PAR. 3. The truth and facts in relation to said statements, representations and assertions are and have been as follows:

(1) Respondent's exterior house paint is not of the best grade or quality manufactured and sold to the public in the United States, but is inferior thereto and contains large and substantial proportions of inferior and low grade or quality paint ingredients, to wit: barium sulphate, siliceous matter, calcium, asbestine, and other similar low grade paint ingredients, aggregating in excess of 30 percent of the pigment portion of said paint. The use in respondent's paint of said inferior and low-grade paint pigments has the effect of cheapening said paint and reducing and lowering the quality thereof. The nonvolatile portion of the vehicle of said paint is not pure linseed oil but contains liquids other than linseed oil. The said paint does not contain any paint ingredient which is "secret" or unknown or unavailable to paint manufacturers generally and to the paint manufacturing industry. All of the ingredients of respondent's said paint

have been discovered and were known to and used as paint ingredients by the paint-manufacturing industry for many years prior to their use in respondent's paint, and no ingredient of said paint was discovered by respondent or by any chemist or other person in respondent's employ or in any other way connected or affiliated with respondent. No chemist is or has been employed as such by respondent, and respondent has not nor has any chemist or other person in its employ spent five years or any other time in making discovery of any such so-called "secret" ingredient or of any other ingredient of respondent's paint. Respondent's said paint does not derive any advantage, benefit or good qualities from any "secret" paint ingredient. Respondent's said paint has not stood up under the severest kind of tests, or under any other kind of test, for twenty-two years. Respondent does not own or maintain, nor has it at any time owned or maintained a testing or other laboratory; nor has every gallon of its exterior house paint been tested in a laboratory of respondent or elsewhere by or for respondent. Respondent does not and has not tested or employed any chemist or other person to test the raw materials from which the merchandise in which it deals are manufactured.

(2) Respondent is not the manufacturer of said merchandise which it markets, and in its sale and distribution thereof does not act as a manufacturer, but it purchases said merchandise from another corporation or other corporations and in the sale thereof acts as and is a dealer and middleman; respondent does not own, operate, or control any paint factory, grinding or mixing machinery or vats or other manufacturing facilities or manufacturing equipment of the value of \$1,000,000 or of any value whatever; nor does it own, operate or control the factory or manufacturing facilities in or by which its said merchandise is manufactured; nor does it own, operate, or control factory buildings or manufacturing equipment or facilities pictorially represented in its advertising matter, as above alleged; nor do any such buildings or other buildings so pictorially represented bear the name "The Adams Paint Company."

(3) Respondent does not maintain or operate a laboratory or a staff of chemists for paint research or testing purposes or other purpose. Respondent does not purchase, store, or use in large quantities or other substantial quantities raw materials from which the merchandise in which it deals are or have been manufactured; nor does respondent have the means facilities and equipment for such purchase, use or storage of such raw materials.

(4) Respondent has carried on and conducted its business only since the year 1924. It has not been in business or conducted any business whatsoever prior to the year 1924, and has not been in busi-

ness or conducted any business since the year 1906 or for more than twenty years as represented. Respondent's business does not amount to \$1,000,000 annually. It has not sold and does not sell a million gallons of paint a year, but the amount of its annual business and the number of gallons of paint sold annually is substantially less than a million dollars and a million gallons, respectively. Nor is respondent's business the largest of its kind in the United States.

(5) Respondent's prices at which it sells its said merchandise are not factory prices or manufacturer's prices but are dealer's prices which include elements of costs, profits, or other charges of middlemen, dealers, and traveling salesmen. Respondent's customers in purchasing respondent's merchandise do not thereby save to themselves or avoid costs, profits, and other charges and expenses of all middlemen, wholesalers, jobbers, retailers, brokers, traveling salesmen, or other dealers.

(6) The prices at which respondent sells its said merchandise to its customers are not less by 40 percent or by \$1 to \$2 per gallon or by any substantial sum, than the prices at which similar paints of competing manufacturers and of equal or better quality may be and can be purchased in the open market by such consumers or purchasers.

(7) Respondent's roof coating Griptite has not been proven to last ten years and will not give satisfactory service, for ten years, in the purposes and uses for which it is sold by respondent; and said product when applied to and used on roofs as represented by respondent will not without the necessity of reapplication render such roofs weatherproof or impervious to wind, snow, sleet, or rain, for a period of ten years. Said Griptite has not been used or successfully tested for twenty-six years or at all prior to the year 1924 when respondent began business. Nor will said Griptite withstand heat of about 1,200 degrees; and its serviceableness will not remain unimpaired under the application of such heat to it.

PAR. 4. The said representations, statements, and assertions, as alleged in paragraph 2 hereof, are and have been false, misleading, and deceptive, and are calculated to mislead and deceive and have and had the capacity and tendency to, and do, mislead, deceive, and induce the purchasing public to purchase said merchandise of respondent in and because of the erroneous belief that said representations, statements, and assertions were and are true. Further, said representations, statements, and assertions have and had the capacity and tendency to cause, and the effect of causing, respondent's salesmen and agents to promote respondent's business by using

and to offer for sale and sell said merchandise to respondent's customers under, said representations, statements, and assertions.

PAR. 5. In and through the methods and means used by the respondent in advertising, offering for sale, and selling its merchandise as hereinabove set forth and for the purpose and with the effect of inducing the purchasing public to purchase said products from respondent, respondent causes and for more than three years last past has caused divers and sundry other false, misleading, and deceptive representations, statements and assertions to be made to the purchasing and consuming public of and concerning its business and the merchandise which it sells.

PAR. 6. Among the competitors of respondent are many manufacturers, dealers, and distributors of paint, paint materials, and roof coating who market such products under truthful representations to the purchasing and consuming public in competition with respondent, and who do not use false or misleading representations of the type and character used by respondent as hereinabove alleged.

PAR. 7. The use by respondent of the false, misleading, and deceptive representations, statements, and assertions as hereinabove set forth constitutes practices or methods of competition which tend to and do (a) prejudice and injure the public, (b) unfairly divert trade from and otherwise prejudice and injure respondent's competitors, and (c) operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the paint, paint materials, and roof-coating business.

PAR. 8. Said false, misleading, and deceptive acts, practices, and methods of respondent under the circumstances and conditions hereinabove alleged are unlawful 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 coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission issued under Section 5 of the 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", and respondent's answer thereto that respondent waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding, and pursuant to Rule III of the Commission's Rules of Practice, consents that the Commission may make, enter, and

serve upon respondent, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises,

It is now ordered, That in the course of the sale or distribution in commerce, as commerce is defined in said act, of paints, painting materials or roof coating, the respondent corporation, The Adams Paint Company, its officers, directors, agents, representatives, servants, and employees, cease and desist:

(a) From directly or indirectly making or causing to be made any representation, statement, or assertion, in advertisements, trade promotional literature, or by any other means, to the effect that any such paint, or painting material, exclusive of necessary coloring, matter or dryers, is composed wholly or principally of white lead, zinc oxide, and linseed oil or is composed wholly or principally of such white lead, zinc oxide, linseed oil, and a secret ingredient; or that any ingredient in said paint or painting material is a secret paint ingredient not generally known or available to the paint-manufacturing industry or to respondent's competitors; or that any such so-called secret ingredient was discovered by respondent's chemists; or that respondent's chemists spent five years or any other time in making such discovery; or that any such so-called secret ingredient is one of the greatest discoveries of the twentieth century; or that any such so-called secret ingredient gives respondent's paint superior qualities and advantages which purchasers cannot procure in the use of other paints or of the paints of competitors; or that any such paints or painting materials do not contain inert material, or do not contain titanox, barium sulphate, siliceous matter, calcium carbonate, or asbestine, at all or beyond any certain proportion: unless and until such respective representations, statements, or assertions are true in fact.

(b) From directly or indirectly making or causing to be made any representation, statement, or assertion in advertisements, trade promotional literature, or by any other means, to the effect that respondent corporation is the manufacturer of any of said paints, painting materials, or roof coating; or that it owns, operates, or controls a paint factory, or any other manufacturing equipment or facilities used in the manufacture of said paints, painting materials, or roof coating; or that its customers in purchasing from respondent are thereby dealing directly with the manufacturer of said products; or that in the sale and distribution of said products by respondent cor-

poration to its customers the same are sold and distributed by and from the manufacturer directly to such customers to the exclusion and without the intervention of any or all middlemen: unless and until respondent becomes the manufacturer and actually owns and operates or directly and absolutely controls such paint factory and manufacturing equipment or facilities by which any and all such products so represented are manufactured; or unless and until, so long as said paints, paint materials and roof coating are manufactured by the Acorn Refining Company, an Ohio corporation, and while the capital stock of the respondent corporation is owned by said Acorn Refining Company or by the stockholders thereof, a full and true disclosure of the facts of such manufacture by, and relationship of respondent to, said Acorn Refining Company is prominently made in conjunction with such representations, statements or assertions.

(c) From directly or indirectly making or causing to be made any representation, statement or assertion in advertisements, trade promotional literature or by any other means, to the effect that respondent's paint factory or the factory in which respondent's said products are manufactured is a million dollar factory; or that respondent is a million dollar corporation; or that paint manufacturing equipment or factory buildings pictorially illustrated or otherwise referred to are factory buildings and equipment owned or operated by the respondent corporation; or that such buildings or premises bear respondent's name "The Adams Paint Company" as illustrated or represented; or that respondent corporation itself maintains and operates a chemical laboratory with a staff of chemists; or that respondent's own chemists test each or every gallon of its paints or the materials used therein; or that any of respondent's paint has stood up under the severest kind of tests, or any other test, for twenty-two years or for any other length of time; or that respondent corporation owns and operates the facilities for purchasing or storing in large quantities the raw materials from which its merchandise is manufactured; or that respondent corporation does purchase said raw materials in such large quantities; or that respondent corporation has carried on and conducted its business since the year 1906; or that it has been engaged in the business of manufacturing or selling paints and roof coating for more than twenty years or for any other period of time; or that respondent corporation's annual volume of business in said paints, paint materials and roof coating aggregates or has aggregated a million dollars or more; or that respondent's annual sales of paint aggregate a million gallons

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Order

or more: unless and until such respective representations, statements or assertions are true in fact.

(d) From directly or indirectly making or causing to be made any representation, statement, or assertion, in advertisements, trade promotional literature, or by any other means, to the effect that the prices at which respondent sells its said products are factory prices or manufacturer's prices; or that by reason of respondent being such manufacturer and selling its products under a plan or method of distribution by which the costs, profits, or other charges of middlemen are eliminated, respondent's said prices are less than the prices at which paint products of equal quality are available or may be purchased from competitors or from retail stores or through other dealer channels; or that the benefit of any such savings by reason of the elimination of such middlemen accrues to purchasers from respondent; or that such saving is a certain definite amount, such as \$1 or \$2 per gallon, or 40 percent; unless and until respondent owns and operates or directly and absolutely controls a factory or manufacturing facilities in or by which said products are manufactured, and such representations, statements, or assertions are otherwise true in fact.

(e) From directly or indirectly making or causing to be made any representation, statement or assertion, in advertisements, trade promotional literature, or by any other means, to the effect that respondent corporation has used and successfully tested its roof coating, named Griptite, for a period of twenty-six years or more, or for any definite period; or that said roof coating, Griptite, is fireproof to the extent that it will withstand about 1,200 degrees of heat without its serviceableness being impaired or destroyed thereby; or that it will withstand any similar degrees of excessive heat without impairment of its serviceableness: unless and until such respective representations, statements or assertions are true in fact.

(f) From directly or indirectly making or causing to be made any other false, misleading or deceptive representations, statements, or assertions in the course of the sale or distribution of any of said paints or painting materials.

It is further ordered, That respondent corporation, The Adams Paint Company, shall, within 60 days after the 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF

J. OLIVER SNYDER, AN INDIVIDUAL, DOING BUSINESS
UNDER THE TRADE NAME OF E. SNYDER & SONCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2120. Complaint, Oct. 26, 1933—Order, Apr. 28, 1934*

Consent order requiring respondent individual, his agents, etc., in connection with the sale of cigars in interstate commerce, to cease and desist from

- (a) Falsely labeling, branding, advertising, or otherwise describing his said product as "Factory Throw-outs", "Factory Left-overs", or by words of similar import, or as having been made from the same kind and quality of tobacco used for higher-priced, higher-grade products, unless the cigars thus designated and described are in fact thrown out, left over, or discarded from factory lots of higher-priced, higher-grade cigars, made with the same kind and quality of tobacco intended for and used in such higher-priced, higher-grade product, or consist of cigars made with the same kind and quality of tobacco used for a product regularly marketed under other brand names and at higher retail prices; and
- (b) Representing through use of words "Manufacturer", "Producer", or "Maker", or in any other way that it makes or produces the cigars sold and distributed by it, and does not operate as a middleman, and thereby saves all the costs, profits, or other charges of middlemen and thus affords his customers advantages in price, service, and quality not available to purchasers from competing middlemen or other competitors, unless and until he actually owns and operates or directly and absolutely controls the factory or other producing and manufacturing facilities used in the production of all cigars sold or distributed by him under the aforesaid representations, statements, and assertions.

Mr. Henry Miller 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 J. Oliver Snyder, an individual doing business under the trade name of E. Snyder & Son, hereinafter referred to as respondent, has been and 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. Respondent, J. Oliver Snyder, an individual, is and for more than 2 years last past has been engaged in carrying on and conducting the business as hereinafter described under the trade