

Complaint

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IN THE MATTER OF
SCHWARTZ & COMPANY, INC.

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

Docket 2167. Complaint, Mar. 17, 1934—Decision, Nov. 20, 1934

Where a corporation engaged in the purchase of solid fiber board, and corrugated fiber board shipping boxes, a substantial proportion of which it purchased from manufacturers outside the State, in competition with others similarly purchasing, and in sale of said boxes to wholesalers, retailers, and others for use as shipping containers, in competition with manufacturers of and dealers in such boxes, a substantial number of whom are located outside said State, and sold and shipped to customers in the State, in the same area therein which it sold its said products, caused said boxes to be marked with the "certificate of box maker", in purported compliance with the rule of the official classification committee for the railroads, requiring the box maker to certify his product as conforming, as specified, to all construction requirements of consolidated freight classification, and imposing a higher rate upon shipments made in containers which do not conform, and bear such certificate by other than the actual maker; with capacity and tendency to mislead and deceive purchasers, a substantial number of whom prefer to purchase direct from the manufacturer rather than from jobber or wholesaler, into believing it to be the manufacturer of the said boxes thus sold by it, and that they conformed to all the requirements and specifications of the rule in question, and would therefore take the lower rates for carriage, and thereby unfairly divert business to it from competitors who make the boxes which they sell, and from those who do not make their boxes or in any way represent themselves as the makers thereof:

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. PGad B. Morehouse and *Mr. Robt. N. McMillen* for the Commission.

Mr. Yale L. Schekter, of Philadelphia, Pa., for respondent.

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 Schwartz & Company, Inc., a corporation, has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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. Respondent, Schwartz & Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, having and maintaining its office, plant, and principal place of business at 151 North Third Street in the city of Philadelphia, in the State of Pennsylvania. Respondent has been and is engaged in the purchase in interstate commerce and in the sale of wrapping paper, twine, and corrugated and fiber boxes, and causing said products, when sold, to be transported from its office or plant in the city of Philadelphia in the State of Pennsylvania to the several purchasers thereof located at other points in said State of Pennsylvania. In the course and conduct of its said business, respondent is, and has continuously been in competition with other individuals, partnerships, and corporations engaged in the purchase and sale of the same or competitive products in commerce in or among the several States of the United States. Many makers of such boxes and other jobbers in such boxes are continually offering for sale and selling such boxes in competition with respondent, and such jobbers are continually purchasing said boxes in interstate commerce in competition with respondent. Shippers of merchandise are continually purchasing said boxes in interstate commerce in competition with respondent.

PAR. 2. Arch-Bilt Corrugated Products Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having and maintaining its office, factory, and principal place of business at 55 Thirty-third Street, Brooklyn, in the State of New York. Said Arch-Bilt Corrugated Products Corporation is, and has been, engaged in the manufacture and sale of certain corrugated boxes, to be used by manufacturers and other shippers of goods and merchandise as shipping boxes in which to pack such goods and merchandise and cause the same to be transported to purchasers thereof. Respondent has been, and is, employing and causing said Arch-Bilt Corporation to manufacture certain of such corrugated boxes for the respondent and to sell and cause the same to be transported to respondent from the factory of said Arch-Bilt Corporation in said city of Brooklyn in the State of New York to respondent at its said plant and place of business in the city of Philadelphia in the State of Pennsylvania. Said Arch-Bilt Corporation has been, and is, complying in all things with the terms of such employment and of the purchase of said boxes.

PAR. 3. In order that manufacturers or other shippers of goods and merchandise may rightfully use said boxes as shipping boxes in which

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to cause goods and merchandise to be transported in interstate commerce, such boxes must be so constructed as to meet the requirements of certain rules of the Consolidated Classification Committee made up of representatives of the companies operating the railroads situated within the several States of the United States, said rules were adopted by such Consolidated Classification Committee and were by it filed with the Interstate Commerce Commission as a part of the freight tariff of said railroad companies, in compliance with the law which requires all freight tariffs to be filed with the Interstate Commerce Commission and also with the railroad commissions of the several States. Failure to comply with such rules as to corrugated boxes so used as shipping boxes subjects shippers of orders of less than a carload to a penalty of 20 percentum of the scheduled freight rate, and subjects shippers in carload lots to a penalty of 10 percentum of such scheduled freight rates.

One of said rules requires that each box must bear a certificate of box maker, labeled, printed, or stamped in ink, clearly showing that the boxes do so conform, such certificate to be made in form, size, type, and wording as indicated in a form incorporated in such rule. Said form incorporates the name of the maker of said boxes as the maker thereof.

PAR. 4. Respondent, in its contract with said Arch-Bilt Corporation requires and causes said Arch-Bilt Corporation to stamp in ink on each of said boxes a certificate that conforms to said rule last above alleged in all things, except that the name of said Arch-Bilt Corporation as maker of said boxes is omitted, and the name of respondent is substituted therefor as the maker of such boxes. Said false and misleading certificate so stamped upon such boxes is the only certificate appearing thereon, when said Arch-Bilt Corporation causes said boxes to be so transported and delivered to respondent, and when respondent causes said boxes to be transported and delivered to its customers. Respondent and said maker of said boxes combine and conspire in the manner alleged to evade or violate said rules and regulations and to cause said boxes so misbranded to be transported in interstate commerce as above alleged.

PAR. 5. Respondent is not the maker of such boxes, but is merely a jobber or dealer therein. In the course of his said business, respondent is, and has been, in competition with other jobbers or dealers who purchase in interstate commerce and offer for sale and sell boxes made by others, and which bear certificates in the names only of the makers thereof. Respondent is also, and has been, in the course of his said business in competition with makers of boxes, who offer for sale and sell boxes of their own manufacture which bear only truthful certificates carrying only the names of the true maker of each such box.

PAR. 6. Substantial numbers of purchasers and users of such boxes prefer to purchase boxes of the maker thereof—partly because they expect in such purchases to save in the price paid the profit otherwise to be included in prices charged in purchases from mere jobbers or dealers in such boxes; partly because they prefer to deal with the maker who has intimate knowledge of the construction of such boxes and is directly responsible to his customers for defects therein; and partly because they prefer to use only such boxes in the shipment of their goods and merchandise as carry the name of the maker or makers thereof, as required by the rules above referred to, thus avoiding the risk of being subjected to the penalties above referred to.

PAR. 7. The stamping of said false and misleading certificate upon said boxes so carrying respondent's name as the maker thereof, has the tendency and capacity to, and probably will, deceive and mislead substantial numbers of purchasers and users of said boxes into the belief that respondent is the maker thereof, and to induce such substantial numbers of purchasers and users to purchase the boxes so offered for sale and sold by respondent, in such erroneous belief and because thereof. Wherefore, said false and misleading certificates so stamped on said boxes have the tendency and capacity to, and probably will, divert to respondent much trade that, but for said false and misleading certificates, would go to such competitor jobbers or to such true makers of boxes who offer for sale and sell the same in competition with respondent. Respondent's said use of said false and misleading certificate denies to the purchasing public knowledge of respondent's said relation to the manufacture of said boxes, and the knowledge necessary to enable the public to purchase such boxes only of the true maker thereof, and to purchase only such boxes as bear truthful certificates and only such boxes as comply with the requirements and rules above set forth.

PAR. 8. The acts of respondent as hereinabove alleged are all to the prejudice of the public, and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning 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."

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 its complaint upon the respondent, Schwartz & Company, Inc., charg-

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ing it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and filed answer, hearings were had before a duly qualified examiner of the Commission, at which respondent was represented by counsel, evidence was introduced on behalf of the Commission and by respondent in its behalf. Thereafter briefs were filed on behalf of the Commission and of respondent.

Thereafter this proceeding came on for final hearing on the briefs, respondent having waived oral argument, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Schwartz & Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and place of business in the city of Philadelphia, State of Pennsylvania. It has been, at all times hereinafter mentioned and now is, engaged in the sale, among other things, of solid fiber board boxes and corrugated fiber board boxes. Its sales are made to wholesalers, retailers, and others in various lines of business, primarily not for resale but for use as shipping containers.

PAR. 2. A substantial proportion of the boxes so sold by respondent have been and are purchased by it from manufacturers thereof whose factories are located outside the State of Pennsylvania. At the time of purchase it was and is contemplated by the parties that said boxes should be, and they thereafter have been and are regularly shipped from said factories to respondent's place of business within the State of Pennsylvania. In the purchase of said boxes respondent is in competition with other persons, firms, and corporations located within the State of Pennsylvania purchasing boxes from manufacturers located outside said State, and which boxes, when so purchased, are shipped to the purchasers at their places of business within said State.

PAR. 3. In the course and conduct of its said business of the sale of corrugated and fiber boxes, respondent is in competition with manufacturers of such boxes and with wholesalers of and dealers in the same, a substantial number of whom are located outside the State of Pennsylvania and sell and ship to customers within the State of Pennsylvania in the same area in which respondent sells and offers to sell its said boxes.

PAR. 4. The Official Classification Committee is an organization of the railroads engaged in the carriage of freight among the States in the eastern part of the United States. It is the duty and function of this committee to compile and file with the Interstate Commerce Commission and similar Commissions of the various States, tariffs which are the basis of freight rates to be charged, and charged by said railroads. For a number of years and at the present time, a part of said tariffs has been and is rule 41 of said committee, which governs the rates of charges for goods, wares, and merchandise tendered for shipment and shipped in said fiber board and corrugated fiber board boxes. Section 1 of said rule 41 provides that goods tendered in solid fiber board or corrugated fiber board boxes which do not conform to all the requirements and specifications of said rule 41, shall take a substantially higher rate, to wit: 20 percent if in less than car-lot loads and 10 percent in carload lots, over and above the charge applying to merchandise shipped in such boxes which do conform to the requirements and specifications of said rule. Section 8 of said rule provides, as one of the requirements, that all such fiber boxes must bear a certificate of the box maker, labeled, printed or stamped in ink, clearly showing that the boxes do conform to the requirements and specifications of said rule, and sets out the form such certificates shall take, as follows:

Circular in form; inside the outer rim the name and address of the box maker; within the circle the words "Certificate of box maker. This box conforms to all construction requirements of consolidated freight classification. Resistance (bursting test) pounds per square inch. Dimension limit inches. Gross weight limit pounds."

It is and has been the interpretation and application by the committee of this rule 41 that goods tendered or shipped in boxes bearing said certificate but not in the name of the actual box maker, take and have taken the higher rates.

PAR. 5. Respondent is not the manufacturer or maker of the boxes which it sells but they are purchased by respondent from the makers thereof, as hereinabove alleged. Nevertheless, upon all such boxes respondent causes said certificate in the form and words prescribed by said section 8 of rule 41, to be stamped with its name and address in that part of the form which is to bear the box maker's name and address.

PAR. 6. A substantial number and to a substantial extent purchasers of such boxes prefer to purchase direct from the manufacturer, rather than from jobber or a wholesaler.

PAR. 7. The said practice of respondent has the capacity and tendency to mislead and deceive the purchasers thereof into the belief

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that respondent is the manufacturer of the fiber board boxes which it sells, and to deceive and mislead them into the belief that said boxes conform to all the requirements and specifications of rule 41 of the Official Classification Committee and will, therefore, take the lower rates for carriage; and thus unfairly to divert business to respondent from competitors who make the boxes they sell and from competitors who do not make the boxes they sell and do not in any way represent themselves to be the makers thereof.

CONCLUSION

The said acts and practices of respondent, under the circumstances and conditions set forth in the foregoing findings, are to the prejudice of the public and of 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 evidence and the briefs of counsel for the Commission and for respondent, and the Commission having considered the record and 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"—

It is now ordered, That respondent, Schwartz & Company, Inc., its officers, agents, representatives, and employees, in connection with the purchase in interstate commerce, for resale, of corrugated fiber-board and solid fiber-board boxes, forthwith cease and desist from stamping, stenciling, labeling, or printing upon them, and from causing or permitting other persons, for its benefit and in its behalf, to stamp, stencil, label, or print upon them, the certificate prescribed by rule 41 of the Official Classification Committee, as set out in the findings herein, or in any other manner representing that it is the manufacturer of said boxes.

It is further ordered, That respondent, its officers, agents, representatives, and employees, forthwith cease and desist from stamping, labeling, printing, or stenciling upon boxes not manufactured by it and sold by it in competition with other persons, firms, and corpora-

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tions selling and shipping into Pennsylvania from without said State solid fiber-board and corrugated fiber-board boxes, the certificate prescribed by rule 41 of the Official Classification Committee, as set out in the findings herein, or in any other manner representing that it is the maker of said boxes.

It is further ordered, That said respondent shall within 30 days from and after the date of the service upon it of this order file with this Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

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IN THE MATTER OF
AMERICAN DRUG CORPORATION

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

Docket 2170. Complaint, Apr. 24, 1934—Order, Nov. 21, 1934

Consent order requiring respondent corporation, in connection with advertisement and sale in interstate commerce of its preparation "Sinasiptec" to desist from representing in advertisements, newspapers, magazines, journals, radio, circular letters, or otherwise, that said preparation will cure, prevent, or relieve sinus trouble, except to the extent that inflammation and swelling may be relieved through the use thereof, as specified, or that said preparation has ever cured or prevented sinus trouble, or is an antiseptic.

Mr. John W. Hildrop for the Commission.

Fordyce, White, Mayne & Williams and *Mr. Wm. F. Fahey*, all of St. Louis, Mo., for respondent.

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 American Drug Corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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. Said American Drug Corporation, respondent, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, having its principal office and place of business in the city of St. Louis, in the State of Missouri. It is, and for more than four years last past has been engaged in the business of manufacturing, selling, and distributing, to dealers, users, and the general consuming public throughout the United States, certain medicinal or therapeutic preparations or products denominated and designated by respondent as "Sinasiptec", "Sinasiptec Inhalant", "Sinasiptec Ointment", "Sinasiptec Liquid", and "Sinasiptec Salve", which preparations or products are indicated, sold and distributed by respondent for use in the treatment of human ailments,