

IN THE MATTER OF  
**CADILLAC PAINT MANUFACTURING COMPANY AND  
H. A. LESSEN**

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

*Docket 2118. Complaint, Apr. 10, 1934<sup>1</sup>—Decision, Mar. 25, 1935*

Where a corporation engaged in the manufacture and sale of paints, varnishes, and paint products through salesmen and the mail, acting at the direction of, or with, its secretary-treasurer and general manager, in control of the operation thereof, and moving spirit therein—

- (a) Represented, branded, and sold as white lead and linseed oil paints, and quality outside house paints, through use of such words as "White lead ground in linseed oil", "durable", "X-Tra Good", "economical", "dependable", "guaranteed", and otherwise, products which did not contain the aforesaid or other ingredients in the requisite quantities and proportions to justify such designation and sale, failed to conform in the matter of ingredients or proportions to the formulæ or notices set forth on the containers thereof, in those cases in which given, were composed, in large and excessive proportions, of unrevealed water, petroleum spirits, cheap and inadequate adulterants and substitutes, inert materials, extenders and fillers, and fell far below paint specifications recognized by reputable manufacturers of first quality, standard products;
- (b) Labeled the containers of many of its products with the names and addresses of fictitious concerns and set forth, under such names, pretended guarantees and representations as to the quantity, quality, composition and nature of the product concerned, and the results to be expected therefrom by the ultimate user in the way of durability or otherwise, with intent of enabling it thereby to avoid the recognized function of a trade name, and make and sell such products without disclosing the place of manufacture and manufacturer thereof, and with effect of misleading purchasers thereof in various cities into believing, rightly, that a genuine functioning concern was back of the paint involved, as set forth on the label, to which they might rightfully look for the faithful performance of the statements, representations, and guarantees covering the product to which such trade-name label was attached;
- (c) Encouraged and aided "factory" and "dollar" stores and similar enterprises in selling at auction and otherwise as "bankrupt stock" and "interstate unclaimed freight", its aforesaid heavily watered and otherwise adulterated products which it sold to dealers at from 60 to 70 cents a gallon, as high-grade house and outside paint, for advertisement and resale by such outlets as extra good, durable, and guaranteed paint at from 99 cents to one dollar a gallon, with asserted saving of more than 50 percent because purchased from the manufacturer", notwithstanding fact it is impossible to make and sell a durable, quality paint at any such price, and reputable manufacturers decline to put their name on such a product; with the

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<sup>1</sup> Supplemental and amended.

result that such outlets created the impression upon the public that said products, as a result of their supposed purchase, as aforesaid, were high-grade paints offered at exceptionally low prices;

- (d) Supplied trade-name labels to concerns engaged in the purchase of paints at bankrupt and distress sales, including such "dollar" and "factory" paint stores in the several cities, for use upon such unknown and miscellaneous products as they might thus acquire, and thereby lost control over whatever integrity, if any, its said trade names had or should have had, and placed in the hands of such "dollar" and "factory" stores instruments for use in misleading and deceiving the public as to the origin of such paints and the quality and value thereof;

With the result that reputable stores and dealers which advertise annually at large expense ready-mixed paint, with lasting protective qualities, at from \$3.15 to \$3.25 a gallon for high-grade paint, and seek to maintain a standard of paint which covers more, lasts longer, and goes further, suffered heavy losses in their advertising campaigns to educate the public as to the advantages and economy of good paint and found their efforts brought to naught through sale of such watered and adulterated products, as aforesaid, competitors suffered heavy losses, goodwill acquired in connection with the advertising of genuine paint products was destroyed through the sale of the products concerned, and the consuming public was confused, misled and deceived to its loss, into believing that it was purchasing high-grade, durable paint at unusually attractive prices; and

- (e) Included among trade names employed on its products, names which closely simulated those of legitimate functioning enterprises in certain cities, and thereby caused confusion and deception of the purchasing public as to the origin of such products and the identity of the seller:

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

*Mr. Marshall Morgan* for the Commission.

*Mr. Isaac Finkelstein*, of Detroit, Mich., for respondents.

#### SUPPLEMENTAL AND AMENDED COMPLAINT

Whereas, the Federal Trade Commission did heretofore, to wit, on September 28, 1933, issue its complaint herein charging and alleging that respondents herein are and have been guilty of unfair methods of competition in interstate 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;

And said Commission having reason to believe that respondents herein have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, other than and in addition to, those in relation to which the Commission issued its complaint aforesaid and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest; now therefore:

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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 Cadillac Paint Manufacturing Company, a corporation, and H. A. Lessen, individually and as an officer and general manager of said Cadillac Paint Manufacturing Company, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Cadillac Paint Manufacturing Company, is a corporation organized under the laws of the State of Michigan with its principal office and place of business at Detroit, Mich., and is engaged in the manufacture and sale of paints and paint products, sold by it in interstate commerce.

Respondent, H. A. Lessen, residing at 2696 Webb Street, Detroit, Mich., is secretary-treasurer and general manager of the Cadillac Paint Manufacturing Company, located at 433 Leland Avenue, Detroit, Mich., and directs the activities and controls the policy and affairs of the respondent company.

Respondent Cadillac Paint Manufacturing Company was incorporated under the laws of the State of Michigan on May 18, 1932, for the purpose of engaging in and carrying on the business of manufacturing, buying, and selling paint and paint products. Respondent, Lessen, for 13 years prior to October 1931 was engaged in business as a paint contractor, in the city of Detroit. From October 1931 until the incorporation and organization of the respondent corporation in May 1932 respondent Lessen manufactured paint at 433 Leland Avenue, Detroit, Mich., under the trade name of Detroit Paint Manufacturing Company.

The respondent, Cadillac Paint Manufacturing Company, is now and for more than one year last past has been engaged in the manufacture, sale, and distribution in commerce among various States of the United States, and more particularly the States of Michigan, New York, Ohio, and Indiana, of paints, varnish, and paint products. In the course and conduct of such business respondent Cadillac Paint Manufacturing Company has been and now is engaged in direct and substantial competition with various corporations, partnerships, and individuals manufacturing and selling or offering for sale in interstate commerce paints, varnishes, and paint products.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, the respondent, Cadillac Paint Manufacturing Company, acting through and under the direction of H. A. Lessen,

has offered for sale and sold paint, lead, varnish, and other paint products under numerous trade names, and transported or caused the same to be transported in commerce among several States of the United States, to retail dealers located in various States of the United States, and particularly to so-called "Army", "Dollar", and "Factory" paint stores. Respondent Cadillac Paint Manufacturing Company's business results from sales negotiated through the medium of traveling salesmen and the United States mails. The retail dealers to whom the respondent company sells its products under whatever trade name employed, in turn offer such products for sale and sell the same to the general purchasing public.

PAR. 3. As a result of scientific experimentation, as well as practical experience, paint that may be sold in commerce as high-grade, durable, standard quality is a paint composed of accepted, high-grade, metallic pigments combined with liquid vehicle composed largely of linseed oil, to carry the pigments in heavy solution.

The term "white lead" is commonly understood and used by both the trade and the purchasing public to designate either sulphate of lead or carbonate of lead without the addition of other pigments. White lead has been used for many years both alone and as the principal ingredient of high-grade paint, for the purpose of furnishing a protecting film for a painted surface.

Linseed oil is the most generally accepted vehicle to bind together the pigment particles and to cement the paint film to the surface. It dries into a relatively hard, tough, and elastic film.

The addition of water to paint is for the purpose of cheapening, thickening, and adulterating it. Water in quantities impairs the durability of paint and is regarded as a gross adulterant.

Petroleum distillates evaporate upon exposure to the air and when used in excessive quantities, displacing linseed oil, impair the durability of paint, and constitute a gross and fraudulent adulterant.

Paint specifications for paint generally recognized by reputable manufacturers of first quality, standard paint products, require that the pigment shall contain not less than 80 percent by volume of lead and zinc, or lead, zinc and titanium pigments; that the pigment content shall constitute not less than 60 percent, by volume, of the total content, and that the vehicle shall contain not less than 80 percent, by volume, of pure linseed oil, the remainder volatile oils and dryers.

In the course and conduct of the business of respondent company as referred to in paragraphs 1 and 2 hereof, and in connection with the sale of its products not only to retail dealers in various States but by the retail dealers to the purchasing public, the respondent com-

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pany, acting under the direction of H. A. Lessen, has been and now is engaged in making various false, misleading and deceptive representations through the use of labels and otherwise, as shown by the following fraudulent acts and practices:

(1) Manufactured, represented, and sold as "white lead ground in linseed oil", a product which contained less than 1 percent of white lead.

(2) Manufactured, represented, and sold as "durable economical linseed oil house paint", a product the vehicle of which contained 85 percent of water and an oil which was not pure linseed oil.

(3) Manufactured, represented, and sold as "white lead", a product the pigment of which contained 99.52 percent barium sulphate, no lead and no zinc.

(4) Manufactured, represented, and sold as "duracote flat wall paint", a product the vehicle of which contained 49 percent of water.

(5) Manufactured, represented, and sold as "X-Tra good ready-mixed linseed oil house paint", "Ironsides paint guaranteed \$1.39 per Gallon", "durable house paint", "guaranteed house paint", "ready-mixed house paint", "durable economical linseed oil house paint" and other alleged high-grade paint, paint the pigments of which were 48 percent, 47.4 percent, 38.20 percent, 47.07 percent, 41.55 percent, 47.10 percent, 35.73 percent, and other inadequate percentages respectively, of the total content.

(6) Manufactured, represented, and sold as "X-Tra good house paint", a product the vehicle of which contained 60.8 percent of water.

(7) Manufactured, represented, and sold as "X-Tra good ready-mixed linseed oil house paint", a product the vehicle of which was composed of 57.6 percent of water.

(8) Manufactured, represented, and sold as "X-Tra good ready-mixed linseed oil house paint", a product the vehicle of which contained 66.1 percent of water.

(9) Manufactured, represented, and sold as "Ironsides paint guaranteed \$1.39 per Gallon", a product the vehicle of which contained 50.94 percent water.

(10) Manufactured, represented, and sold as "durable house paint", a product the vehicle of which contained 29.18 percent of water, and whose pigment contained respectively 38.26 percent of silicates and 43.56 percent of calcium carbonate.

(11) Manufactured, represented, and sold as "guaranteed house paint", a product the vehicle of which contained 47.90 percent of water.

(12) Manufactured, represented, and sold as "ready-mixed guaranteed house paint", a product the vehicle of which contained 56.73 percent of water.

(13) Manufactured, represented, and sold as "durable economical linseed oil house paint", a product the vehicle of which contained 51.34 percent of water.

(14) Manufactured, represented, and sold as "X-Tra good ready-mixed linseed oil house paint", a product the vehicle of which contained 79 percent of water by weight, and an oil which was not pure linseed oil.

(15) Manufactured, represented, and sold as "durable paint", a product which contained less than 1 percent of lead when the label on the can specified 7 percent; 0.4 percent zinc oxide when the label specified 13 percent; 62.2 percent of lithopone when the label specified 35 percent; 1.2 percent of siliceous matter when the label specified 10 percent of magnesium silicate; and a vehicle 59 percent of which was volatile matter, containing 11.6 percent of water.

(16) Manufactured, represented, and sold as "durable ready-mixed house paint—white", a product the vehicle of which was labeled as containing 83 percent of linseed oil when in fact only 60 percent was found, and 17 percent of dryers and mineral spirits when in fact 40 percent of the latter was found.

(17) Manufactured, represented, and sold as "Sunbeam Paint" a product shipped in a can bearing the words "red lead" printed above a white lead-zinc house paint formula, such product being a very poor grade of red lead paint, the pigment of which was only 13 percent by weight, a gallon of the paint weighing only 8.4 pounds, when it was represented as weighing 15 pounds.

(18) Manufactured, represented, and sold as high-grade, standard paint, paint which was composed throughout of cheap, inadequate substitutes for the requisite elements and proportions of white lead carbonate or sulphate, zinc oxide, or other metallic pigments, and linseed oil.

(19) Printed and affixed to cans of paint sold by respondent company various trade-name labels setting forth formulae not truly representing the ingredients found or contained in the paint inside the can, and put in the paint large quantities of added or substituted ingredients not set forth on the label.

(20) Sold to dealers as high-grade house and outside paint, at a price of 60 to 70 cents a gallon, paint which was heavily watered and otherwise adulterated, such price being far below that at which high-grade, standard quality of paint can or could be manufactured and sold.

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(21) Encouraged and aided the opening of "Army", "Factory" and "\$1.00" paint stores in various States of the United States for the purpose of selling misbranded and adulterated paint and paint products and aided and encouraged such stores in the misbranding of Cadillac Paint Manufacturing Company products sold as high-grade standard paint at approximately one-third normal prices.

(22) Aided and abetted managers and operators of so-called "Army", "Factory", and "\$1.00" paint stores located in cities of various States of the United States in selling at \$1 a gallon paint that was heavily adulterated with cheap substitutes and of grossly inferior quality, advertising and representing it variously to be "ground in pure linseed oil", "pure white lead and linseed oil paint", "fully guaranteed finest quality", "good grade of paint", "quality ready-mixed house paint", "guaranteed house paint ground in pure linseed oil—fresh from factory, \$1, inside, outside, all colors", "guaranteed house paint—color guaranteed", creating in the mind of the consuming public the impression that it was getting an honest, superior quality of house paint at an unusually attractive price and value, when such was not the fact, for both the pigment and vehicle of paints manufactured by the respondent Cadillac Paint Manufacturing Company and sold and transported by it in interstate commerce, were and are composed largely of cheap adulterants and substitutes and are far below paint specifications for paint generally recognized by reputable manufacturers of first quality, standard paint products.

PAR. 4. In addition to the foregoing acts and practices respondent, Cadillac Paint Manufacturing Company, has avoided or refrained from printing its own name on labels for paint manufactured and sold by it, but instead has printed on such labels the following among other names of fictitious companies and corporations which exist only on paper as trade-name fiction:

Detroit Paint & Color Works, Detroit, Michigan;  
Interstate Paint & Roofing Company, New York, Detroit, Chicago;  
Detroit Color Works, Detroit, Michigan;  
Detroit Quality Paint Manufacturing Co., Detroit, Michigan;  
Superior Paint Company, Cleveland, Ohio;  
Superior Paint and Color Works, Cleveland, Ohio;  
LaSalle Color Company, Detroit, Michigan;  
United Manufacturing Products Company, Detroit, Michigan;  
Reliance Paint & Varnish Works, Saginaw, Michigan; Detroit, Michigan;  
Ironsides Paint Works, Detroit, Michigan, U. S. A.;  
Klimatic Paint Company, Detroit, Michigan;  
Wolverine Lead & Color Works, Detroit, Michigan;

Wolverine White Lead Works, Cleveland, Ohio;  
H. A. Lessen Company, Detroit, Michigan;  
Red Arrow Paint & Varnish Company, Detroit, Michigan;  
Old Method Economy White Lead Works, Detroit, Michigan;  
Michigan Paint Products Company, Detroit, Michigan;  
Imperial Color Works; Detroit, Michigan;  
Wallace Paint and Varnish Company, Cleveland, Ohio;  
Imperial Roofing Company, Detroit, Michigan.

Respondent Cadillac Paint Manufacturing Company, acting under the direction and control of respondent H. A. Lessen, has been and is using the herein enumerated trade names on labels for paint products manufactured and sold by respondents in interstate commerce in such manner as to deceive and mislead the ultimate purchasers of such paint products into believing that such trade names were and are those of corporations or companies having an actual business existence standing behind paint products covered by such labels, certifying to the quality and quantity of paint in the cans so labeled, giving directions for the proper use of said paint, guaranteeing its quality and in some instances guaranteeing the number of years it would last. Said trade names were not and are not now employed in the ordinary sense of denoting some particular concern, or the origin of goods with some particular concern, but were and are being used to indicate a seller's recognition and acceptance of the responsibilities and obligations resulting from the sale of his products for a valuable consideration.

Among the business functions and responsibilities the respondents herein undertook and are undertaking to have their various trade named companies assume and perform through the use of trade name labels were and are the following:

The Detroit Color Works, Detroit, Mich., existing only as a trade name, undertakes to give directions covering the use of the following paint products: "X-tra Good Mixed Paint Ground in Pure Linseed Oil"; "Mixed Paint"; "X-tra Good Ready Mixed House Paint"; "Sunbeam Enamel"; "Durable Ready Mixed Paint"; "Wear More Ready Mixed Paint"; "Depend-On Enamel"; "Porch Deck"; "Rex Flat Paint"; "House Paint—Ready for use"; "Dura Cote Flat Wall Paint".

The Detroit Color Works further made and makes on labels the following representations:

That "Leak Proof Asbestos Roof Coating makes tin, corrugated iron, felt, gravel and composition roofs water tight" and that "Leak Proof is unaffected by changing temperatures"—that "the fiber tendons grip the surface tenaciously"; that "House Paint" is "One Gal-

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lon U. S. Std. Measure"; that a "General Purpose Varnish" and a "Four Hour Varnish" are "One Gallon—U. S. Standard"; that a "Wear More House Paint" is a "Linseed Oil Paint".

The "Superior Paint & Color Works, Cleveland, Ohio", existing as a trade name only gives directions for the use of "Depend-On Ready Mixed House Paint" and "Durable-Economical Ready Mixed House Paint".

The "Detroit Quality Paint Mfg. Co., Detroit, Mich.", existing only as a trade name, gives directions for the use of "Rex One-Coat Enamel".

The "Superior Paint Company, Cleveland, Ohio", existing only as a trade name, gives directions for the use of "Perfection Ready for Use Mixed Paint".

The "Interstate Paint and Roofing Company, New York-Detroit-Chicago" existing only as a trade name, gives directions for the use of "Interstate Interior Ready Mixed Exterior House Paint".

The "Michigan Paint Products Company", of Detroit, existing as a trade name only, gives directions for the use of "Durable-Economical Ready Mixed House Paint".

The name, "Cadillac Paint Manufacturing Company", which company manufactured and sold the above-described paint products, does not appear on any of these labels.

PAR. 5. Among the further business functions and responsibilities the respondents herein undertook and are undertaking to have their various trade name companies assume and perform through the use of trade name labels affixed to cans of paint sold and transported into various States of the United States were and are the following:

The "Detroit Color Works", existing in name only, guarantees a spar varnish; represents that it is of "Guaranteed Quality". The same guarantees are given in the case of a "House Paint", a "General Purpose Varnish" and a "Four Hour Varnish". A "Mixed Paint" is also guaranteed to a purchaser thereof by this supposedly existing company.

The "Wallace Paint & Varnish Co., Cleveland, Ohio", existing as a trade name only, represents that "House Paint" is "Guaranteed", that it is "Quality Guaranteed" and "One Gallon U. S. Std. Measure". The same representations are made for a "Floor Varnish".

The "Huron Lead Works, Detroit, Mich.", existing only as a trade name, gives the following guarantee for Huron "Paste White": "Guaranteed Ground in Pure Linseed Oil".

The "Superior Paint and Color Works, Cleveland, Ohio", existing as a trade name only, gives the following Guarantee for "Durable-Economical Ready Mixed House Paint": "Guaranteed to Give Satisfactory Service for FOUR Years".

The name "Cadillac Paint Manufacturing Company", which company manufactured and sold the above-described paint products, does not appear on any of these labels.

The purchasers of said paint in various cities of the United States were and are thereby led to believe and were and are justified in believing that a genuine functioning concern was and is back of the paint covered by such trade name labels, a company to which they might rightfully and properly look for the faithful performance of the statements, representations, and guarantees covering the paint products to which said trade name labels were attached.

PAR. 6. Among the trade names so adopted, used, and employed by respondents in the sale of their paint products, were and are a number so similar to those of actual, legitimate business concerns operating in various States of the United States, as to result unavoidably in confusion and deception to the purchasing public in relation to the origin of the products sold under such trade names, as follows:

(a) The trade name, "Detroit Paint & Color Works, of Detroit, Michigan", was and is being used when there is and was a company already operating in Detroit known as Detroit Paint & Color Company;

(b) The trade name "Michigan Paint Products Company, of Detroit, Michigan", was and is being used when there was and is a company operating in Detroit under the name of Michigan Products Corporation;

(c) The trade name "Imperial Color Works, of Detroit, Michigan", was used when there was operating in the city of Detroit another company by the name of Imperial Color Works, Inc.;

(d) The trade name "Wolverine White Lead Works", of Cleveland, Ohio, was and is being used when there was and is operating in that city a concern known as Wolverine White Metal Works; also another concern operating there under the name of Wolverine Varnish Company.

The name "Cadillac Paint Manufacturing Company" does not and did not appear on labels using such similar and confusing trade names.

PAR. 7. Said respondents, in addition have furnished said herein described labels to various dealers making a practice of buying paint at bankrupt or distress auction sales, including "Dollar", "Factory",

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and "Army" paint stores in the several States of the United States established by and with the financial aid and assistance of respondents, and serving as outlets for products of the Cadillac Paint Manufacturing Company. Such "Dollar", "Factory", and "Army" and other stores have in turn affixed said labels to paint picked up at various auction sales over the country and thereafter sold by them. Said respondents have permitted outsiders freely to use and affix to unknown, miscellaneous paint products labels containing trade names of respondent Cadillac Paint Manufacturing Company, the said company thereby losing control over whatever integrity, if any, such trade names might otherwise have had or should have had. Respondents thereby place and are placing in the hands of the proprietors of such "Dollar", "Factory", and "Army" stores instruments used and to be used in misleading and deceiving the public as to the origin of the paint, its quality and value. Said labels were and are being furnished to said "Dollar", "Factory", and "Army" and similar stores by respondents with full knowledge and in reckless disregard of the fact that the labels would be affixed indiscriminately to any and every character of paint of unknown origin, quality, and content obtained at bankrupt or distress auction sales, and elsewhere.

Said trade name labels were employed by respondents not for the purpose of indicating that certain paint products were manufactured by and originated with the Cadillac Paint Manufacturing Company, but on the contrary were employed to satisfy the demand of certain of the Cadillac Paint Manufacturing Company's customers and distributors who believe and believed that the use of certain names would prove of greater selling advantage than other names used upon paint labels. Said trade name labels were employed by respondents not to denote origin, the recognized function of a trade name, but to permit the Cadillac Paint Manufacturing Company to manufacture and sell paint products without disclosing where and by whom such products were manufactured.

The purchasers of such paint are and have been misled and deceived thereby into believing that the trade names used on said labels are and were the names of genuine functioning business concerns, capable of performing the undertakings and guarantees set forth on such labels and are and have been misled and deceived concerning the origin of the paint sold under such labels, its quality and value.

PAR. 8. Said respondent, Cadillac Paint Manufacturing Company, in furtherance of its efforts to effect sales of paint manufactured by it cooperated or participated with Cadillac Paint Manufacturing Company outlets in the advertising of respondent company's prod-

ucts as being those of bankrupt and unclaimed freight stock sales thereby creating the impression upon the purchasing public that respondent company's paints, because obtained through bankrupt and freight stock sales, were a high grade paint product being sold at an exceptionally low price. Said Cadillac Paint was thus advertised and sold by Cadillac outlet stores in sales variously advertised as "unclaimed freight", and "\$450,000 stock liquidation at bankrupt prices", "interstate unclaimed freight". Said freight and bankrupt sale advertisements by Cadillac Paint Manufacturing Company outlets offered "\$3. House Paint All Colors" for 95 cents a gallon; "\$3.50 High Grade Paints" \* \* \* "Depend On", "Detroit Color" at 95 cents a gallon; "\$3. High Grade 4-Hour Varnish" at 79 cents a gallon; "\$2.50 House Paint" at 39 cents a gallon; "\$2. 4-hour Floor Varnish" at 98 cents and 58 cents per gallon; "\$3.50 Paint" at 98 cents; when in truth and in fact said advertised values were false and fictitious, said Cadillac products never having been worth or sold for such fancy top prices, denoting highest quality and excellence for paint.

PAR. 9. Respondents have claimed in writing that they are inexperienced in the manufacture of paint, whereas the fact is they have mastered all the intricacies touching the manufacture and distribution in interstate commerce of cheap, inferior paint, including the misbranding and adulteration of the same. Respondents possess, in fact, full knowledge of the various adulterant ingredients which commonly are and may be used in the manufacture of cheap, inadequate paint, as a substitute for the requisite ingredients prescribed for and found in high grade, durable, standard quality of paint. Respondents have undertaken to sell and distribute, and have sold and distributed, and are selling and distributing in interstate commerce, large quantities of cheap, watered adulterated paint under various labels, misbranding either the quality or ingredients of the paint in the can, or both, in addition to giving false and fictitious guarantees concerning the same, well knowing that said paint products were adulterated and misbranded, thereby deceiving and misleading the public into relying upon and accepting such representations as true.

PAR. 10. The above and foregoing fraudulent acts, practices, and representations of respondent company in the course of manufacturing, advertising, offering for sale and the selling of its products in interstate commerce, have the capacity and tendency to mislead and deceive, have placed and are placing in the hands of the wholesaler and retailer in interstate commerce the means of deceiving the ultimate purchasers, and have misled and deceived the purchasing public

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in various States of the United States into the belief that respondent company's paints were and are of high-grade quality and durability, containing only the ingredients indicated on their labels in the proportions stated thereon, and were and are being offered to the public at an especially low price, whereas such were not the facts, and induce and have induced the purchasing of respondent company's products in reliance upon such erroneous beliefs, and in addition divert trade from and otherwise injure competitors of respondent company.

PAR. 11. The above false, deceptive, and fraudulent acts and practices committed by said respondents as aforesaid, are all to the prejudice of the public and respondents' 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", approved September 26, 1914.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission on September 28, 1933, issued and thereupon served a complaint in this proceeding upon the Cadillac Paint Manufacturing Company, a corporation, and H. A. Lessen, an individual, charging them and each of them with the use of unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act.

Respondents entered their appearance by counsel and on March 17, 1934, filed answer to said complaint. Subsequently, to wit on April 10, 1934, the Commission issued a supplementary and amended complaint against the respondents herein charging them with other and further acts and practices, constituting the use of unfair methods of competition in violation of the provisions of Section 5 of said Act. Respondents entered their further appearance by counsel and on May 7, 1934, filed their answer to said supplemental and amended complaint.

Thereafter, hearings with respect to the charges in the complaint were held before an examiner of the Commission thereunto duly appointed, at which evidence was offered in support of the complaint.

Thereupon the taking of testimony was closed, respondents having failed to offer evidence or to file a brief in opposition to the complaint. And the Commission having now duly considered the record, and being fully advised in the premises, makes this its report stating its findings as to the facts and its conclusions drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Cadillac Paint Manufacturing Company, is a corporation chartered on May 18, 1932, under the laws of the State of Michigan, with its principal office and place of business at 433 Leland Avenue, Detroit, Mich. Since its incorporation respondent, Cadillac Paint Manufacturing Company, has been engaged in the manufacture, sale, and distribution in commerce among various States of the United States, and more particularly in the States of Michigan, New York, Ohio, and Indiana, of paints, varnish, and paint products. Respondent, Cadillac Paint Manufacturing Company, causes merchandise sold by it to be transported from the point of origin at Detroit, Mich., through and into various other States of the United States to the respective purchasers thereof, and in the course and conduct of its business has been, and is now in active competition with other corporations, partnerships, and individuals engaged in a similar sale and distribution of paint, varnish, and paint products in commerce in, between, and among the several States of the United States and in the District of Columbia.

Respondent, Lessen, for 13 years prior to October 1931 was engaged in business as a paint contractor in the city of Detroit. From October 1931 until the incorporation and organization of the respondent corporation in May 1932 respondent, Lessen, manufactured paint at 433 Leland Avenue, Detroit, Mich., under the trade name of "Detroit Paint Manufacturing Company". Respondent, Lessen, is secretary-treasurer and general manager, the moving spirit, of respondent, Cadillac Paint Manufacturing Company, and directs the activities and controls the policy and affairs of the respondent company.

The business of respondent company results from sales negotiated through the medium of traveling salesmen and the United States mail. The retail dealers to whom the respondent company sells its products under whatever trade name and trade mark employed, in turn, offer such products for sale and sell the same to the general purchasing public.

Respondent company, in addition to selling some of its products under its own corporate name, distributes numerous others through the use of some twenty trade-name companies, none of which alleged companies has or ever had, any existence in fact. When any one of said company trade-names was printed on a can of paint manufactured by the Cadillac Paint Manufacturing Company, the name of

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such actual parent concern was, and has been omitted. Said trade-name companies used by respondent company are as follows:

|                                                                       |                                                         |
|-----------------------------------------------------------------------|---------------------------------------------------------|
| Detroit Paint & Color Works, Detroit, Michigan;                       | Klimatic Paint Company, Detroit, Michigan;              |
| Interstate Paint & Roofing Company, New York, Detroit, Chicago;       | Wolverine Lead & Color Works, Cleveland, Ohio;          |
| Detroit Color Works, Detroit, Michigan;                               | H. A. Lessen Company, Detroit, Michigan;                |
| Huron White Lead Works, Detroit, Michigan;                            | Red Arrow Paint & Varnish Company, Detroit, Michigan;   |
| Detroit Quality Paint Manufacturing Co., Detroit, Michigan;           | Old Method Economy White Lead Works, Detroit, Michigan; |
| Superior Paint Company, Cleveland, Ohio;                              | Michigan Paint Products Company, Detroit, Michigan;     |
| Superior Paint and Color Works, Cleveland, Ohio;                      | Imperial Color Works, Detroit, Michigan;                |
| LaSalle Color Company, Detroit, Michigan;                             | Wallace Paint and Varnish Company, Cleveland, Ohio;     |
| United Manufacturing Products Company, Detroit, Michigan;             | Imperial Roofing Company, Detroit, Michigan.            |
| Reliance Paint & Varnish Works, Saginaw, Michigan; Detroit, Michigan; |                                                         |

**PAR. 2.** Outside paint that may be sold as durable, economical, standard quality is a paint composed of accepted high grade insoluble metallic pigments combined in proper proportions with a liquid vehicle composed largely of linseed oil, to carry the pigments in heavy solution. The pigment is the indestructible portion of paint that supplies a protective and decorative coating to the surface to which it is applied. The vehicle acts as a binder to hold the indestructible pigment in place on the surface to which it is applied and it also acts as a weatherproofing agent to repel moisture or water.

The commonly accepted pigments for outside white or light-tint paint are made of white lead, zinc oxide, and titanium. White lead has been used for many years, both alone and as the principal ingredient of high-grade paints.

"White Lead" means only the basic carbonate or the basic sulphate of lead. If said basic carbonate or sulphate of lead be reduced or reinforced at all, the terms should be modified or followed by the word "compound" in letters as conspicuous as the main title. If the lead content be less than 50 percent of the whole the word "lead" should not be used at all on the label except as a part of the complete formula printed thereon. This standard has been univer-

sally recognized by the paint industry for over twenty years, and is so recognized and followed today by the paint industry.

United States Federal specifications for red lead paste provide for a red lead pigment of from 92 to 94 percent ground with from 6 to 8 percent of linseed oil, the 94 percent solution not to contain more than 0.5 percent of moisture or other volatile matter, nor more than 1.5 percent of coarse particles and skins. Red lead paste when made into red lead paint must be mixed with linseed oil, turpentine, and liquid dryer in the following proportions:

|                      |             |    |
|----------------------|-------------|----|
| Red lead paste.....  | pounds..... | 20 |
| Raw linseed oil..... | pints.....  | 3  |
| Turpentine.....      | gills.....  | 2  |
| Liquid dryer.....    | gills.....  | 2  |

This paint, when brushed on a smooth, vertical surface, shall dry hard and elastic without running, streaking, or sagging.

Linseed oil, a clear nonvolatile oil expressed from flax seed, is the most generally accepted vehicle to bind pigment particles together and cement the paint film to the surface.

Volatile oils and dryers are used in the vehicle of paint to make it easier to apply. A drying oil hardens or becomes tough upon exposure to the air. A volatile agent like turpentine is used in paint or varnish as a thinner, that is, to reduce the body or brushing consistency of paint. Volatile spirits evaporate completely upon exposure to the air, have no binding or film-coating qualities, and the effect of their substitution for linseed oil in outside paint is to cheapen the paint and reduce its durability. Petroleum distillates used as a substitute for linseed oil constitute a gross adulterant.

Barium sulphate (barytes), calcium carbonate (chalk), calcium sulphate (gypsum), and magnesium silicate (asbestine), are known as "extenders" when used in an outside linseed oil paint, and their general purpose is to cheapen the paint. A small amount of magnesium silicate has a legitimate use in an outside paint, to prevent settling.

A pigment composed of white lead, or lead and zinc oxide, or titanox is opaque and possesses high covering power, while pigments composed of such extenders as barium sulphate, calcium sulphate, calcium carbonate, and magnesium silicate are transparent or translucent, possess no such hiding power, and their use as a substitute for lead, zinc, or titanox greatly affects the durability of paint.

Barium sulphate, which is much cheaper than white lead, has small hiding power as compared to lead, and should never be sub-

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stituted for white lead. When such substitution has been made, the paint peels in a short time, and it becomes necessary to remove the entire paint coat with a blow torch. Barium sulphate has a legitimate use in inside paints.

Lithopone is also an inert pigment suitable for flat wall paint, and possessing a hiding power smaller than that of lead. It is cheaper than lead. Lithopone should never be substituted for lead in an outside paint. Neither barium sulphate nor lithopone will give satisfactory service in the case of an outside paint.

Calicum carbonate is an extending pigment which possesses little body as a pigment ingredient. It is a product which should be combined with water, and is much used in calcimine work. It has no legitimate use in connection with an outside paint. Its substitution for lead, zinc, or titanium pigments would not produce a durable outside paint.

Calcium sulphate makes a good calcimine and is added to cheap paints as an extender, but has little real value as a covering or preserving agent in paint. It should never replace lead, zinc, or titanium as a part of the pigment.

Silicates, such as magnesium silicate or asbestine, are inert pigments and are used mainly to prevent settling of paint pigment. They should not be used as substitutes for lead, zinc, or titanium pigments in an outside paint.

It is not permissible under any circumstances to put water in an outside or linseed oil paint. When water is added to a paint containing linseed oil it has a tendency to thicken it or puff it up. Paint which has been thickened with water, by reason of its resulting heavy body, would deceive an ordinary purchaser. Outside paint to which water has been added loses in durability and usefulness to the extent of such addition or substitution; the more water that is added the less covering obtained.

The following figures give the range in manufacturers' wholesale prices by the pound covering the period from October 24, 1932, to May 22, 1933, on various ingredients used as pigments:

|                                             |                                                                  |
|---------------------------------------------|------------------------------------------------------------------|
| White lead carbonate 6 to 6½ cents a pound; | Calcium carbonate (chalk-whiting) ⅞ of a cent to 1 cent a pound; |
| Basic lead sulphate 5½ to 6 cents a pound;  | Calcium sulphate (gypsum) 1⅞ cents a pound;                      |
| Zinc oxide 5¼ cents a pound;                | Magnesium silicate (asbestine) ⅞ cents a pound;                  |
| Titanox B 6 cents a pound;                  | Barytes 1⅞ cents a pound.                                        |
| Lithopone 4½ cents a pound;                 |                                                                  |

The range in manufacturers' wholesale prices per gallon of non-volatile liquid ingredients of the vehicle for outside paints covering the same period follows:

|                                                                        |                                                                  |
|------------------------------------------------------------------------|------------------------------------------------------------------|
| Linseed oil $45\frac{1}{10}$ cents to $62\frac{1}{10}$ cents a gallon; | Soy bean oil $31\frac{1}{2}$ to $46\frac{1}{10}$ cents a gallon; |
| Menhaden oil (light pressed) 23 to $32\frac{1}{10}$ cents a gallon;    | Sardine oil 9 cents to 16 cents a gallon.                        |

A tin gallon container for paint, with a handle attached, costs from 10 to 11 cents; one-half gallon container, about 6 cents.

When cheap or so-called "Dollar Paint", that has water in it, diluted linseed oil or fish oil, and a substitution such as barium sulphate or other extender pigment for a lead pigment, is used for an outside paint job, the result will be that the paint will either wash off or crack or "alligator". It will be necessary in such instance, in case of repainting, to burn off the cheap paint down to the wood, put on a coat of white lead primer and then follow that with two coats of good paint, making an expensive job. Good paint put on top of cheap paint likewise comes off and is a loss. Inferior paint, seemingly economical at first because of its original cheapness, proves very expensive in the end.

United States Federal specifications for linseed oil paint made on a lead-zinc base suitable for outside use call for a pigment composed of basic white lead carbonate or sulphate or a mixture thereof, zinc oxide and other white mineral pigments containing no lead or zinc compounds, and tinting colors. The white lead content of the pigment shall in no case be less than 60 percent of the total pigment, and the sum of the white lead and zinc oxide shall in no case be less than 90 percent of the total pigment. The liquid shall contain not less than 80 percent linseed oil, the balance to be combined dryer and thinner. The thinner shall be turpentine, volatile mineral spirits, or any mixture thereof. The pigment of such outside paint, under these specifications, shall comprise a minimum of 66 percent of the total content, the liquid shall comprise a maximum of 34 percent of the total content, and the maximum water content shall be 0.5 percent. A gallon of this paint shall weigh not less than  $16\frac{3}{4}$  pounds.

Well known and creditable manufacturers of ready-mixed outside paint employ a similar formula known as the "80-20". In this the pigment and liquid are found in a 67-33 ratio, respectively, the pigment is 80 percent carbonate of lead and 20 percent oxide of zinc, and the liquid portion is 88 percent linseed oil, 8 percent turpentine and 4 percent Japan dryer. These specifications fall within

the limits and admit of the proportions prescribed by United States Federal specifications.

PAR. 3. Respondent company, in connection with the sale of its products in various States, and acting under the direction of respondent, H. A. Lessen, has manufactured, represented, and sold as "White Lead Ground in Linseed Oil", a product which contained 84 percent barium sulphate, 13.2 percent lithopone and less than 1 percent of white lead; manufactured, represented, and sold as "Durable Economical Linseed Oil House Paint", a product the volatile portion of its vehicle comprising 36 percent by weight of the total content of the can, the vehicle containing over three-fourths by weight of water, or 85 percent, and an oil which was not pure linseed oil; manufactured, represented, and sold as "White Lead" a product the pigment of which contained 99.52 percent barium sulphate, no lead and no zinc; manufactured, represented, and sold as "Dura-Cote Flat Wall Paint" a product the vehicle of which contained 49 percent of water, and comprised 55.19 percent of the total contents of the can; manufactured, represented, and sold as "X-Tra Good House Paint" a product the vehicle of which contained 60.8 percent of water, the pigment being only 49.01 percent of the total content; manufactured, represented, and sold as "X-Tra Good Ready Mixed Linseed Oil House Paint" a product the vehicle of which contained 57.6 percent of water, the pigment of this paint comprising only 47.06 percent of its total content; manufactured, represented, and sold as "Ironsides Ready Mixed House Paint" a product the vehicle of which contained 50.94 percent water, the pigment being only 38.20 percent of the total content, a can of this paint weighing only 10.53 pounds; manufactured, represented, and sold as "Durable House Paint" a product the vehicle of which contained 29.18 percent of water, the pigment containing respectively 38.26 percent of silicates, when only 10 percent was claimed, and 43.56 percent of calcium carbonate when only 15 percent was claimed.

The pigment of this paint comprised 47.07 percent of its total; manufactured, represented, and sold as "Guaranteed House Paint" a product the vehicle of which contained 47.90 percent of water. The pigment of this paint comprised only 41.55 percent of the total content and a gallon weighed only 10.6 pounds; manufactured, represented, and sold as "Ready Mixed Guaranteed House Paint" a product the vehicle of which contained 56.73 percent of water, the pigment comprising only 47.10 percent of the total content; manufactured, represented, and sold as "Durable Economical Linseed Oil House Paint" a product the vehicle of which contained 51.34 percent of water, and a pigment which was only 35.73 percent of the total

content; manufactured, represented, and sold as "X-Tra Good Ready Mixed Linseed Oil House Paint", a product the vehicle of which contained over 79 percent of water by weight, and an oil which was not pure linseed oil; manufactured, represented, and sold as "Durable Paint" a product which contained less than 1 percent of lead when the label on the can specified 7 percent; 0.4 percent zinc oxide when the label specified 13 percent; 62.2 percent of lithopone when the label specified 35 percent; 1.2 percent of siliceous matter when the label specified 10 percent of magnesium silicate; and a vehicle 59 percent of which was volatile matter, containing 11.6 percent of water. The pigment of this paint was 51 percent by weight of the total content, and a can of this paint weighed only 12.5 pounds; manufactured, represented, and sold as "X-Tra Good Ready Mixed Linseed Oil House Paint" a product which, when the can in which it was contained was placed in a Frigidaire ice-making machine, showed a cloudy upper liquid layer and under this a layer of very dense material through which a screw driver could not be driven.

When this can of paint was allowed to come to room temperature and the entire liquid portion was then poured off, the top of the pigment, which had settled to the bottom of the can, the liquid portion was found to consist of two distinct layers. The upper layer consisted of oil, and of petroleum thinner. The lower layer upon examination was found to consist of water. This lower layer of clear liquid, showing transparent through a bottle, approximated 50 percent by weight of the entire liquid or vehicle portion of the can of paint in which it was found; manufactured, represented and sold as "X-Tra Good Ready Mixed Linseed Oil House Paint" another product the vehicle of which when the can of paint in which it was contained was similarly placed in a laboratory refrigerator and subjected to freezing temperature, showed a gritty, mushy substance like glass, which could be broken with the hand and which melted when held between the fingers. This can when subjected to normal temperature also showed a separation of water and oil, the large amount of the water in the can going to the bottom of a bottle as a clear substance when the liquid portion was poured off the pigment; manufactured, represented, and sold as "Sunbeam Outside House Paint" a product shipped in a can bearing the words "Red Lead" printed above a White Lead Zinc House Paint formula, such product being a very poor grade of red lead paint, the pigment of which was only 13 percent by weight of the total content, a gallon of the paint weighing only 8.4 pounds, a little more than water, when it was represented as weighing 15 pounds, and should have weighed 25 pounds. The volatile portion of the vehicle equaled 44 percent of its weight.

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The pigment contained 13 percent of calcium carbonate and 21 percent of hydrochloric acid, insoluble matter mainly siliceous. This paint contained about enough red lead to color the product, and when brushed on tin showed a pale brown color and very poor hiding power. This can was further labeled as "Manufactured conforming to United States Government Standard specifications furnished by Government Bureau of Standards, Washington, D. C."; manufactured, represented, and sold as high-grade, standard paint, paint which was composed throughout of cheap, inadequate substitutes for the requisite elements and proportions of white lead carbonate or sulphate, zinc oxide, or other metallic pigments, and linseed oil; printed and affixed to cans of paint sold by respondent company various trade-name labels setting forth formulae not truly representing the ingredients found or contained in the paint inside the can, and put in the paint large quantities of added or substituted ingredients not set forth on the label; sold to Cadillac outlets as high-grade house and outside paints, at a price of 60 to 70 cents a gallon, paint which was heavily watered and otherwise adulterated, such prices being far below those at which high-grade, standard quality of paint can or could be manufactured and sold; printed and affixed to cans and containers purporting to contain "White Lead" a label reading:

OLD METHOD  
ECONOMY  
WHITE LEAD  
WORKS  
GUARANTEED  
GROUND IN PURE  
LINSEED OIL  
12½ POUNDS

and a label reading:

SNOW WHITE  
HURON  
WHITE LEAD  
WORKS  
GUARANTEED  
GROUND IN PURE  
LINSEED OIL  
12½ POUNDS

On each label the words "White lead" and "Linseed oil" are printed in large, heavy, black type, the word "works" in small, light, inconspicuous type, and the word "guaranteed" in each instance is likewise emphasized by the type employed. Neither label contains any address or wording indicating the origin of the product.

PAR. 4. Respondents admit that at any time there was a representation made upon labels that paint was "ground in linseed oil" such

paint was "ground in linseed oil of the average percentage of 15 per cent of pure linseed oil".

Respondents admit selling to dealers as high-grade house and outside paint, at a price of from 60 to 70 cents a gallon, paint which was heavily watered and otherwise adulterated, such price being far below those at which high-grade standard quality of paint was or could be manufactured and sold.

PAR. 5. Said respondents further encouraged and aided the proprietors of "Factory", "One Dollar", and similar stores in the sale and selling as "bankrupt stock" and "interstate unclaimed freight" of paint which came directly and originally from the Cadillac Paint Manufacturing Company, such paint being sold direct to such stores by respondent Lessen from the stock of the respondent Cadillac Paint Manufacturing Company. Said Cadillac paint was sold to such stores and dealers by the said Lessen with full knowledge on his part that such stores and dealers would and did advertise and sell the paint at auction and otherwise as "bankrupt stock" and "interstate unclaimed freight". Cadillac outlets, in thus advertising and selling respondent company's products as being those of bankrupt and unclaimed freight stock sales, thereby created upon the purchasing public the impression that respondent company's paints, because obtained through bankrupt and freight stock sales, comprised high-grade paint products being sold at exceptionally low prices.

PAR. 6. Said respondents, in addition, have furnished Cadillac and Cadillac trade-name company labels to dealers making a practice of buying paint at bankrupt or distress auction sales, including "Dollar" and "Factory" paint stores in the several States of the United States, serving as outlets for products of the Cadillac Paint Manufacturing Company. Such "Dollar", "Factory", and other stores have in turn affixed said labels to miscellaneous lots of paints picked up at various auction sales over the country and thereafter sold by them. Said respondents have thus made it possible for outsiders to affix to such unknown, miscellaneous paint products labels emanating from and employed by the Cadillac Paint Manufacturing Company, the said company thereby losing control over whatever integrity, if any, its trade names might otherwise have had or should have had. Respondents have thereby placed and are placing in the hands of the proprietors of such "Dollar", and "Factory" stores, instruments used and to be used in misleading and deceiving the public as to the origin of paint, its quality and value.

PAR. 7. Respondent, Cadillac Paint Manufacturing Company, acting further under the direction and control of respondent, H. A. Lessen, has been and is using the hereinbefore enumerated trade

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names on labels for paint products manufactured and sold by respondent, Cadillac Paint Manufacturing Company, in interstate commerce in such manner as to deceive and mislead the ultimate purchasers of such paint products into believing that such trade names were and are those of corporations or companies having an actual business existence standing behind paint products covered by such labels. Said trade names were not and are not now employed to designate a particular business or the place at which it is located, or to identify merchandise with a specific source.

Respondent, under the trade name of Detroit Color Works, Detroit, Michigan, represents that "Leak Proof Asbestos Roof Coating makes tin, corrugated iron, felt, gravel and composition roofs water tight" and that "Leak Proof is unaffected by changing temperatures—that the fiber tendrons grip the surface tenaciously"; that certain products are "One Gallon U. S. Std. Measure"; that a "Wear More House Paint is a Linseed Oil Paint"; guarantees a spar varnish; represents that it is of "guaranteed quality". The same guarantees are given in the case of a "House Paint"; a "General Purpose Varnish" and a "Four Hour Varnish". A "Mixed Paint" is also guaranteed to a purchaser thereof by this supposedly existing company; respondent, under the trade name of Wallace Paint & Varnish Company, Cleveland, Ohio, represents a "Floor Varnish" and a "House Paint" as "guaranteed" and as "One Gallon U. S. Std. Measure"; respondent, under the trade name of the Huron Lead Works, Detroit, Michigan, guarantees Huron "White Lead" as "Ground in Pure Linseed Oil"; and respondent, under the trade name of the Superior Paint and Color Works, Cleveland, Ohio, guarantees Durable Economical Ready Mixed House Paint to "Give satisfactory service for four years".

The name "Cadillac Paint Manufacturing Company", which company manufactured and sold and sells the above-described paint products, does not appear on any of these labels, nor is there any address printed on or in connection with any trade-name label, identifying such trade-name company with the Cadillac Paint Manufacturing Company of 433 Leland Avenue, Detroit, Mich. No trade name appears on letterheads or in advertising matter so far as the record discloses. Said trade name labels were employed by respondents not to denote origin or identity with a particular business, the recognized function of a trade name, but to permit the Cadillac Paint Manufacturing Company to manufacture and sell paint products without disclosing where and by whom such products were manufactured.

The purchasers of said paint in various cities of the United States were and are thereby led to believe, and were and are justified in

believing that a genuine functioning concern, that set forth on each trade name label, was and is back of the paint covered by such labels, a company to which they might rightfully and properly look for the faithful performance of the statements, representations and guarantees covering the paint products to which said trade name labels were attached.

PAR. 8. Reputable stores expend large sums of money annually advertising ready-mixed paint with lasting protective qualities. They advertise and seek to maintain a standard of paint that covers more, lasts longer and goes further. Such reputable stores advertise high-grade paint at from \$3.15 to \$3.25 per gallon. "Dollar" paint stores, and other outlets handling Cadillac paint, advertise alleged extra-good, durable and guaranteed paint for 99 cents to \$1 per gallon. These figures even include the price of containers. Reputable dealers manufacturing and selling a durable quality of paint are unable to make such a paint that sells for \$1.10 per gallon, and decline to put their names on cans of paint that would sell for such price. This watered and adulterated paint is and has been advertised and sold as affecting a saving of more than 50 percent because purchased from "a manufacturer." The dealer that is endeavoring to sell good paint of lasting quality suffers and has suffered heavy losses in his advertising campaign to educate the public as to the advantages and economy of good paint, and finds that his efforts come to naught in the face of the character of competition disclosed in this record. The sale of this watered, adulterated paint results, and has resulted, in heavy financial losses to competitors of respondents, one paint store in Cincinnati suffering a loss of \$5,000 in one month as a result. In addition the sale of this watered, adulterated paint has proved particularly disastrous to and destructive of the goodwill acquired in connection with the advertising of genuine paint products.

The consuming public, the record establishes, being unfamiliar with the methods and processes employed in manufacturing durable, high quality house paint, or concerning the essential ingredients of the same, is, and becomes confused by the representations used by respondents and their outlets in connection with the advertising and sale of "Dollar" paint. Large quantities of this watered, adulterated Cadillac paint have been sold in various States of the United States, notably in the States of Ohio, Indiana, Michigan, and New York. The consuming public in the above-mentioned States believed and has been led to believe that they were obtaining high-grade, durable paint at unusually attractive prices, when such was not the fact. The record discloses that this cheap paint peeled and cracked, and proved very prejudicial to consumers, subjecting them to losses much in

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excess of the original cost of the paint. Numerous complaints concerning this cheap paint were made by the purchasers thereof.

PAR. 9. The record further establishes that the respondents in connection with the use of fictitious trade names, employed such trade names as "Michigan Paint Products Company of Detroit, Michigan", "Imperial Color Works of Detroit, Michigan", and "Wolverine White Lead Works of Cleveland, Ohio", when there were in existence in those cities such operating concerns or companies as "Imperial Color Works", "Michigan Paint Products Corporation", "Michigan Paint Company", and "Wolverine White Lead Works."

PAR. 10. The record in this case establishes that the paint and paint products manufactured and sold by respondents are not and were not, in view of the water and other adulterant ingredients found in them, respectively, "durable", "extra-good", "economical", "dependable" or of a quality entitled to be "guaranteed", and that pails of heavy paste labeled and sold as "white lead" were not, in fact, white lead; that respondents have manufactured and sold ready-mixed outside paint containing large quantities of water, without disclosing on the labels affixed to the containers thereof the presence of any water whatsoever in the paint; that both the pigment and vehicle of paints manufactured by the respondent, Cadillac Paint Manufacturing Company, and sold and transported by it in interstate commerce under brands and labels denoting and intending to denote quality, durability and service, were and are composed largely of cheap adulterants and substitutes, and are far below paint specifications for paint generally recognized by reputable manufacturers of first quality, standard paint products; that respondents have sold and distributed, and are selling and distributing, paint and paint products that were and are so grossly diluted and adulterated as to be far short of the weight paint of such represented character should possess; that respondents have printed and employed on labels the use of a large number of company trade names in such a manner as to deceive and mislead ultimate purchasers of products sold under such labels into the belief that such company trade names were those of corporations or companies having an actual business existence, when, in fact, such trade names were not used to indicate the true origin of the products sold or the real identity or address of the manufacturer thereof; and that respondents, in further connection with the use of fictitious company trade names, have employed trade names similar to or practically identical with those of certain legitimate functioning companies and concerns located in certain cities of the United States, causing thereby confusion and deception of the purchasing public as to the origin of paint products and the identity of the seller thereof.

## CONCLUSION

The hereinbefore acts, statements, practices, and representations of the said respondents, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in interstate 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

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717) the Federal Trade Commission issued and served a complaint and supplemental and amended complaint, upon the respondents, Cadillac Paint Manufacturing Company, a corporation, and H. A. Lessen, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. This proceeding having been heard by the Federal Trade Commission on the complaint and the supplemental and amended complaint of the Commission, the answers of the respondent thereto, the testimony and evidence, and brief of the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondents have 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 the respondents, Cadillac Paint Manufacturing Company, a corporation, and H. A. Lessen, and each of them and their agents, representatives, and employees, in connection with the advertising, offering for sale or selling in commerce among the several States of the United States and in the District of Columbia, of paints and allied products do cease and desist:

(1) From representing on labels or in advertising or in any other way, expressly or by implication, any paint product as "White Lead" or "White Lead Paint" or "White Lead Ground in Linseed Oil" unless and until the pigment content of such paint product exclusive of necessary coloring matter is composed wholly of white lead.

(2) From representing by labels on cans containing paint or in any other way, expressly or by implication, that paint contains white

lead in certain proportion or percentage, unless and until the paint so represented contains white lead in the proportion or percentage represented.

(3) From representing on labels or in advertising or in any other way, expressly or by implication, paint as "Linseed Oil" or "Linseed Oil Paint" or "White Lead Ground in Linseed Oil" unless and until the nonvolatile liquid content of the paint exclusive of necessary dryers is composed wholly of linseed oil.

(4) From representing by labels on cans containing paint or in any other way, expressly or by implication, that paint contains linseed oil in certain proportion or percentage, unless and until the paint so represented contains linseed oil in the proportion or percentage represented.

(5) From representing by labels or cans containing paint or in any other way, expressly or by implication, that paint contains certain materials or ingredients or certain materials or ingredients in certain proportions or percentages unless and until the paint so represented contains said materials or ingredients and in the proportions or percentages represented.

(6) From representing on labels or in any other way, expressly or by implication, a purported analysis of paint or any other product which is not in fact an accurate and truthful analysis of such paint or product.

(7) From representing on labels or in advertising or in any other way, expressly or by implication as "Durable House Paint", "Durable-Economical House Paint", "X-Tra Good House Paint", "Guaranteed House Paint", paint for outside use, which contains excessive quantities of water or petroleum spirits or inert materials or which contains excessive amounts of any filler or extending material and from representing by any other word or words, expressly or by implication, that such paint is the best quality, grade or standard of paint for such use.

(8) From representing on labels or in advertising or in any other way, expressly or by implication, that paint manufactured and sold by respondent Cadillac Paint Manufacturing Company was manufactured by a fictitious company or corporation or by any fictitious companies or corporations which have no existence in fact, and from employing the use of trade name companies in connection with the sale of respondents' products unless and until such trade names are used to denote origin and association or identity of the products sold with the business of respondents.

(9) From guaranteeing or certifying on labels, or by means of advertising or in any other way, in connection with the use of names

of fictitious companies or corporations having no existence in fact, that paint manufactured and sold by the Cadillac Paint Manufacturing Company is of certain described quality, quantity and durability.

(10) From representing in advertising or in any other way, and from selling directly, or indirectly by, through, or in cooperation with another, products manufactured by the Cadillac Paint Manufacturing Company as being those of "bankrupt stock", "interstate unclaimed freight", "distress stock", or stock of similar type and character.

(11) From employing such trade names as Michigan Paint Products Company, Imperial Color Works, Wolverine White Lead Works, or other trade names in the sale of respondent Cadillac Paint Manufacturing Company's products so similar to those of existing legitimate business concerns operating in various cities of the United States as to result unavoidably in confusion and deception of the purchasing public in relation to the origin of products sold under such names.

*It is further ordered*, That the respondent within 60 days from and after the date of the service upon them of this order shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which they are complying with the order to cease and desist hereinabove set forth.

Complaint

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IN THE MATTER OF  
MARSHALL FIELD & COMPANY

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

*Docket 2260. Complaint, Dec. 12, 1934—Order, Mar. 26, 1935*

Consent order requiring respondent, its officers, etc., to cease and desist in the sale of its "Sunlight" knitting yarn, or of any other yarn, from directly or indirectly using or causing to be used any representations, statements or assertions on labels or in advertisements, trade promotional literature, or in any other manner whatsoever, to the effect that any such yarn is moth proof, cannot be damaged by moths, is guaranteed against moth damage, or gives permanent guarantee against moth damage, unless such is a fact, and from directly or indirectly using words or representations in connection therewith which import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief, that any treatment given said yarn is a permanent and continuous preventative against moths or moth damage throughout the normal life of said yarn; provided, however, that nothing in the order shall prohibit respondent from representing that said yarn has been specially treated to prevent moth damage so long as such shall be the fact, or from guaranteeing that said yarn has been specially treated to prevent moth damage and that the respondent will replace the yarn if it is damaged by moths, so long as such are true in fact.

*Mr. John W. Hildrop* for the Commission.

*Wilson & McIlvaine*, of Chicago, Ill., 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 Marshall Field & Company, 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. Respondent, Marshall Field & Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located in the city of Chicago, in said State. It is now and for more than two years last past has been engaged, among