

Complaint

20 F. T. C.

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

other things, in the manufacture at Monticello, Ind., of woolen yarns and in the sale thereof at retail in the city of Chicago and at wholesale to wholesale and retail dealers therein throughout the entire United States. It causes and has caused such yarn when sold to such wholesale and retail dealers to be shipped from its place of business in the city of Chicago aforesaid and from its factory at Monticello, Ind., aforesaid, to purchasers thereof located in the States of Illinois and Indiana and located also in States other than the States of Illinois and Indiana. There is now and for more than two years last past has been a constant current of trade and commerce by said respondent in such woolen yarns between and among the various States and Territories of the United States and in the District of Columbia. In the course and conduct of its said business, respondent is now and for more than two years last past has been in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale in interstate commerce of woolen yarns.

PAR. 2. Among the woolen yarns sold by the respondent as described in paragraph 1 hereof, is a yarn to which respondent has given the trade name "Sunlight". Now and for more than two years last past, the said respondent has represented and still represents on the labels used on such "Sunlight" yarn, on the containers thereof, in advertisements thereof, and in other ways, that the aforesaid "Sunlight" yarn is moth proof, and that it cannot be damaged by moths; when in truth and in fact, said "Sunlight" yarn is not moth proof, and is subject to damage by moths.

PAR. 3. There are among the competitors of the respondent engaged in the sale of woolen yarns between and among the various States of the United States and Territories thereof and in the District of Columbia, manufacturers and dealers who truthfully represent that the yarns dealt in by them are moth proof; and, there are others of said competitors of respondent who deal in yarns which are not moth proof and who do not represent that their said yarns are moth proof. The aforesaid misrepresentations of the respondent as set out in paragraph 2 hereof have the capacity and tendency to mislead and deceive and have misled and deceived dealer purchasers and prospective dealer purchasers and the purchasing public into the beliefs that the representations made by the respondent as set forth in paragraph 2 hereof are true and to purchase said "Sunlight" yarn from respondent in that belief; thereby trade has been diverted to respondent from the aforementioned competitors engaged in the sale of woolen yarns in interstate commerce and as a consequence thereof substantial

injury has been done and is being done by the respondent to substantial competition in interstate commerce.

PAR. 4. By the misrepresentations described in paragraph 2 hereof, the respondent has placed and still places in the hands of dealers to whom it sells such yarn, the means of misleading and deceiving subsequent purchasers thereof, including the purchasing public, into the erroneous beliefs that the aforesaid "Sunlight" yarn is moth proof and cannot be damaged by moths.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's said 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.

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission on the record, including the complaint of the Commission issued under Section 5 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", and respondent's supplemental answer thereto that respondent waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding and, pursuant to the provisions of the Commission's Rules of Practice with respect to answers, consents that the Commission may make, enter, and serve upon respondent without a trial, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That in the course of or in connection with the sale or distribution in interstate commerce or in the District of Columbia or in any Territory of the United States of knitting yarn sold by respondent under the designation "Sunlight", or of any other yarn, the respondent, Marshall Field & Company, its officers, directors, agents, representatives, servants, and employees cease and desist 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:

(a) That any such yarn is moth proof;

(b) That any such yarn cannot be damaged by moths;

- (c) That any such yarn is guaranteed against moth damage;
- (d) That any such yarn gives permanent guarantee against moth damage; and

From directly or indirectly using in connection with such yarn any representations or words 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 this 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.

It is further ordered, That respondent, Marshall Field & Company, shall, within 30 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
DURALITH CORPORATION AND WILLIAM WEINER,
HARRY WEINER, AND JOSEPH D. WEIL

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

Docket 2157. Complaint, Jan. 23, 1934—Decision, Mar. 29, 1935

Where a corporation organized by two individuals, its executive officers, in order to afford a corporate instrumentality for putting into effect a scheme of fraud evolved by them for the sale of a plastic wall paint, the formula of which they controlled, and also to serve as a corporate shield against the consequences of their acts in carrying out said scheme, and said individuals; in pursuance of said scheme, directed to securing distributor dealers, signatures, through fraud and misrepresentation and through agreements, assurances and promises, which were not to be, and were not, kept, observed or performed, to (1) contracts obligating said dealers to accept and pay for specified quantities of said product, and (2) trade acceptances in payment of the purchase price, and acting through numerous agents, or contact men, in order to induce distributors and prospective distributors to visit their executive offices, so that they might secure their signatures, as aforesaid—

- (a) Represented to such distributors, solicited to undertake sale of said product, that corporation had been and was having great success in distribution and sale thereof in other sections, where distributors had effected a great volume of sales, and were sending monthly repeat orders for such product, by the carload, and that the consumer demand for product was 55 percent of that for all competing products, facts being there was no demand whatever therefor, they had not had and were not having any success whatever in the sale thereof, except in unloading it on unsuspecting distributors through such representations and assurances, and no distributor had had any such success as to give any repeat orders of any kind;
- (b) Represented that said product was waterproof and washable and could be applied successfully by anyone, and was the only product for such purposes that could be applied to a large surface by one operation, facts being it was not waterproof unless glazed by varnish or shellac, and could not be applied by one operation, or by housewife, child, or any unskilled person;
- (c) Represented that the territory for which prospect's service was sought, was virgin territory, in that corporation had neither had a distributor therein, nor had product been there offered or sold, or in any part thereof directly or through any other agency, fact being they had sold product therein one or more times, and it was then being offered therein by former distributors at less than cost;
- (d) Represented that a careful survey in the territory had been made of homes and other institutions therein, in order to approximate amount of product which territory would require or consume, as result of which it had been concluded that prospect should have on hand as a month's supply amount determined, for which amount prospect was to obligate himself,