

Complaint

21 F. T. C.

IN THE MATTER OF

UNIVERSAL PARTS MFG. CORPORATION

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

Docket 2369. Complaint, Apr. 18, 1935—Order, June 26, 1935

Ordered, respondent waiving testimony or hearing, and submitting proceeding to Commission, on complaint, answer, and amended answer, that said respondent, in connection with the sale and distribution in interstate commerce of automobile replacement parts and accessories, do cease and desist from directly or indirectly using or causing to be used the word "Manufacturing" or the abbreviation "Mfg." in connection or in conjunction with any word or words or in any way as a trade name or designation for its products or for the products of others or in advertising said products or in any way which may have the capacity and tendency to confuse, mislead or deceive purchasers into the belief that said products are made or manufactured by said respondent, when such is not the fact.

Mr. John W. Hildrop for the Commission.

Butler, Pope, Ballard & Elting, 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 Universal Parts Mfg. Corporation, a 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 the 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. Universal Parts Mfg. Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at Chicago in the State of Illinois, and is now and for more than one year last past has been engaged in the sale of automobile replacement parts and accessories, and in the distribution of said products in commerce between and among various States of the United States; causing said products, when sold, to be shipped from its place of business in the State of Illinois to purchasers thereof located in various of the States of the United States of America other than the State of Illinois. In the course and conduct of its business aforesaid, respondent, Universal Parts Mfg. Corporation has been

at all times herein mentioned in substantial competition with other corporations and with individuals, firms, partnerships, and associations engaged in the sale and distribution of similar products between and among the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent Universal Parts Mfg. Corporation has adopted and still uses as and for a corporate and trade name under which to carry on its said business the words "Universal Parts Mfg. Corporation", and has regularly used, displayed, and featured and still regularly uses, displays, and features said corporate and trade name, including the abbreviation "mfg." for the word "manufacturing", in advertisements and advertising matter widely distributed in soliciting the sale of and selling its products in commerce between and among the various States of the United States; when in truth and in fact the said products have not been and are not manufactured by the said Universal Parts Mfg. Corporation, and when in truth and in fact the said Universal Parts Mfg. Corporation has not owned, operated, or controlled and does not own, operate, or control any foundry, shop, or factory wherein said products have been or are manufactured or fabricated; and when in truth and in fact the products in which respondent has dealt and still deals have been and are manufactured in foundries, shops, and factories, none of which has been or is owned, operated, or controlled by respondent.

PAR. 3. There is and has been a preference on the part of a large portion of the buying public, for automobile replacement parts and accessories bought directly from the manufacturers thereof, which preference is based upon the understanding and belief that by dealing directly with a manufacturer, a middleman's profit is saved to the purchaser, and that by dealing directly with a manufacturer a better grade of goods is obtained in addition to a saving in price.

PAR. 4. The false and misleading statements and representations made by respondent as set out in paragraph 2 hereof have had and still have the capacity and tendency to and do mislead and deceive the buying public into the belief that such statements and representations are true and that by purchasing the aforesaid products from respondent the said purchasing public is dealing directly with the manufacturer thereof and to purchase from respondent in such beliefs; and said statements and representations of respondent have had and still have the capacity and tendency to, and do, unfairly divert trade to respondent from the competitors of respondent who actually manufacture and sell in interstate commerce like and similar products to those sold and distributed by respondent, and also those competitors of respondent who do not manufacture similar and like products to those of respondent but who do not use the words "manufacturing"

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or "mfg." as a part of their corporate name or in advertising and describing such products and who truthfully advertise and describe the same. Thereby substantial injury is done by respondent to substantial competition in interstate commerce.

PAR. 5. The acts and practices heretofore set forth in paragraph 2 hereof are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of 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."

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record including the complaint and respondent's answer and amended answer thereto, in which amended answer, filed June 14, 1935, respondent waived the taking of testimony or any hearing in the cause and submits the proceeding to the Commission on the complaint and on the amended and original answer filed therein; the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That the respondent, Universal Parts Mfg. Corporation, in connection with the sale and distribution in interstate commerce of automobile replacement parts and accessories, do cease and desist from directly or indirectly using or causing to be used the word "Manufacturing" or the abbreviation "Mfg." in connection or in conjunction with any word or words or in any way as a trade name or designation for its products or for the products of others or in advertising said products or in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said products are made or manufactured by said respondent, when such is not the fact.¹

It is further ordered, That the respondent, Universal Parts Mfg. Corporation, shall within 30 days after the service upon it of a copy of this order, file with the Federal Trade 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.

¹ In said amended answer respondent, among other things, set forth that it had changed its name to "Universal Parts, Inc." preceding complaint, and its intention not to resume the abandoned name prior to ownership, operation or control of place in which its products are made.

Syllabus

IN THE MATTER OF

MEADOW BROOK CANDY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3
OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933

Docket 2266. Complaint, Dec. 17, 1934—Decision, June 27, 1935

Where a corporation engaged in the manufacture and sale of candy, including break-and-take assortments composed of candy bars of uniform quality, size and shape, and a number of larger pieces, together with push cards or punch boards through use of which it was determined, in accordance with explanatory legends thereon set forth and the chance number pushed or punched thereon, at a cost of five cents a punch, whether one or two bars of candy or one of the larger pieces should be received by the person making such chance selection, with the last remaining number also entitling the person punching the same to a large piece—

Sold said assortments and push cards or punch boards to retail and wholesale dealers and jobbers, so assembled and packed that they could be displayed for sale and distribution to the purchasing public by lot or chance, with knowledge and intent that they would and should thus be resold; in competition with concerns who regard such a method of sale and distribution as morally bad and one which encourages gambling, and especially among children, and as injurious to the industry in merchandising a chance or lottery rather than candy, and providing retailers with the means of violating the laws of the several States, and who refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance;

With the result of putting at a disadvantage, by reason of their said refusal to adopt such practices, said competitors, who can compete on even terms only through following the same to meet the demand and preference for such candy from certain dealers and small retailers, chiefly, and that of the children from the frequently nearby schools, who purchase said candy by reason of the gambling feature connected therewith, in preference to the so-called "straight goods", and who constitute by far the largest class of purchasers and consumers thereof, and who supply the principal demand therefor, some competitors began the sale and distribution of candy for resale to the public by lot or chance, to meet the constant demand and preference for candy thus sold, trade was diverted to said individual from competitors declining to follow such a practice, freedom of fair and legitimate competition in the industry concerned was restrained and harmed, sales of those dealing in the "straight goods" products exclusively were markedly decreased whenever and wherever the competition of the break-and-take assortments, with their necessarily smaller pieces or inferior quality, was encountered, by reason, principally, of the gambling or lottery feature connected with the latter, gambling among children was taught and encouraged, and the public policy of many of the States, some of which have laws making the operation of lotteries and gambling devices penal offenses, was violated: