

Complaint

IN THE MATTER OF

HARRY SCHLIFTMAN, TRADING AS EAGLE SUPPLY
COMPANY

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

Docket 2393. Complaint, May 17, 1935—Order, June 29, 1935.

Consent order requiring respondent Harry Schliftman, individually, or trading as Eagle Supply Company, or trading under any other name, his agents, etc., in connection with the sale or offer for sale or distribution of paint in interstate commerce, to cease and desist from—

- (1) Using the words "Manufactured by Masterkraft Color Company, Brooklyn, New York", in advertisements, or on brands or labels affixed to containers or to packages of any such paint, or otherwise, and from using any other word, or words, or representations of similar tenor, import or substance, unless and until such company becomes in reality an existing and operating concern and such paint has been in fact manufactured by such concern; or
- (2) Using any statement, representation or assertion to the effect that any such paint is the product of, or is manufactured, packed, distributed or marketed by, any company or concern, when such company or concern is fictitious, or when in fact such paint is not the product of, or has not been so manufactured, packed, distributed, or marketed by, such company or concern.

Mr. Astor Hogg for the Commission.

Kayman & Schwartz, of Brooklyn, N. Y., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress 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 Harry Schliftman, an individual, trading as Eagle Supply Company, hereinafter referred to as respondent, has been and now 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, states its charges in that respect as follows:

PARAGRAPH 1. Respondent Harry Schliftman is an individual trading under the name and style of Eagle Supply Company, with his principal place of business located in the city of New York in the State of New York. He is now engaged and for more than two years last past has been engaged in the business of selling and distributing paint between and among the various States of the United States. He now causes and for more than two years last past has caused such paint,

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when sold by him, to be transported from his place of business in the city of New York aforesaid to the purchasers thereof, some located in the State of New York and others in the various other States of the United States; and there is now and has been for more than two years last past a constant current of trade in commerce by said respondent in such paint between and among the various States of the United States. In the course and conduct of his said business respondent is now and for more than two years last past has been in substantial competition with other persons and with corporations, firms and partnerships engaged in the sale and distribution of paint between and among the various States of the United States.

PAR. 2. In the course and conduct of his business described in paragraph 1 hereof, respondent caused and causes labels to be affixed to the containers of his paint which he has sold and does sell and distributes to the purchasers thereof located in the various States of the United States on which labels appeared and appear the words "Manufactured by Masterkraft Color Company, Brooklyn, N. Y."

In truth and in fact said paint so labeled, sold and distributed as aforesaid is not and was not manufactured by a company of that name. The name "Masterkraft Color Company, Brooklyn, N. Y." is fictitious. No such company by the name of "Masterkraft Color Company" exists or has ever existed in Brooklyn, N. Y., or engaged in any business as represented by respondent.

PAR. 3. The foregoing false and misleading statement used by respondent is and was made for the purpose of deceiving and has had the tendency and capacity to mislead and deceive a large part of the purchasing public and the trade, and to cause them to purchase the paint of the respondent under the mistaken belief that it was manufactured by Masterkraft Color Company, Brooklyn, N. Y., when such paint was not manufactured by Masterkraft Color Company of Brooklyn, N. Y. Said false and misleading statement and representation used by respondent as aforesaid has and had the capacity and tendency to unfairly divert trade to respondent from those of his competitors engaged in a like and similar business but who do not falsely represent the origin or manufacture of their paint. Thereby substantial injury is done and has been done by respondent to substantial competition in interstate commerce.

PAR. 4. The foregoing alleged acts and practices of respondent Harry Schlifman, trading as Eagle Supply Company, are each and all to the prejudice of the purchasing public and competitors of respondent, and constitute unfair methods of competition 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 17th day of May 1935 issued its complaint against the above-named respondent in which it is alleged that respondent is and has been using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act. On the 28th day of June 1935 the respondent filed his consent answer to the said complaint wherein he waives hearing on the charges set forth in the complaint and refrains from contesting the proceeding and consents that the Commission, without trial, without evidence, and without findings as to the facts or other intervening proceedings may make, enter, and serve upon him, in accordance with the provisions of paragraph (b) of Rule V of the Rules of Practice of the Commission, an order to cease and desist from the practices alleged in the complaint in connection with the sale in interstate commerce of paint, and the Commission being now fully advised in the premises—

It is ordered, That the respondent Harry Schlifftman, individually, or trading as Eagle Supply Company, or trading under any other name, his agents, representatives, servants, and employees, in connection with the sale or offering for sale or distribution of paint in interstate commerce, do cease and desist from:

(1) Using the words "Manufactured by Masterkraft Color Company, Brooklyn, New York", in advertisements, or on brands or labels affixed to containers or to packages of any such paint, or otherwise, and from using any other word, or words, or representations of similar tenor, import or substance, unless and until such company becomes in reality an existing and operating concern and such paint has been in fact manufactured by such concern.

(2) Using any statement, representation or assertion to the effect that any such paint is the product of, or is manufactured, packed, distributed or marketed by, any company or concern, when such company or concern is fictitious, or when in fact such paint is not the product of, or has not been so manufactured, packed, distributed or marketed by, such company or concern.

It is further ordered, That the respondent within 60 days after service upon him of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set out.

Syllabus

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IN THE MATTER OF

JAMES D. BOULGER, TRADING AS EASTERN
TEXTILE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2287. Complaint, Jan. 26, 1935—Decision, July 2, 1935*

Where an individual engaged in the sale of cotton remnants by mail order to individual purchasers in the various States; in advertising said remnants in newspapers and magazines of general and wide circulation among the States,—

- (a) Offered and described the same as "dress goods" and as "new and clean", and used the words "4 yds. of each or more" to describe the yardage of the remnants sent purchasers, in such a manner as to mislead and deceive the purchasing public into the belief that all of said remnants were suitable for making dresses, and were new and clean goods, and that each pattern or selection sent purchasers would contain four yards or more in one piece, the facts being that most of them were not of sufficient size or quality to be suitable for making dresses and were not new and clean, but contained tears and misprints in the case of many and were damaged and stained, and none of the selections or patterns sent contained four yards or more of the particular pattern or selection;
- (b) Used the statement "5 yds. extra" in offering said remnants, in such a manner as to cause purchasers thereof to believe that five yards were given with each order without additional charge, and held out special offers or bargains or prices as available only to buyers making their purchases at once or within a limited period, through using the words "this month" in conjunction with or in close proximity to the words "special offer" or "special bargain", the facts being he did not give such extra yardage without additional charge, and said special offers, bargains or prices were not thus limited, but were available to any and all purchasers at any time; and
- (c) Described said remnants as sold "direct to you" and "direct from the mills", notwithstanding the fact he neither owned nor operated any mill or factory of any kind whatsoever; with the result that the purchasing public was misled into the belief that he owned and operated a mill or factory in which said remnants were produced;

With the effect of diverting business to said individual from competitors, including those who in nowise misrepresent their goods, and with tendency so to divert, to their injury and prejudice:

Held, That such practices, under the conditions and circumstances set forth, were all to the injury and prejudice of the public and competitors, and constituted unfair methods of competition.

Before *Mr. Edward M. Averill*, trial examiner.

Mr. S. Brogdyné Tev, II for the Commission.

Mr. T. M. Hayes, of Greenfield, Mass., for respondent.