

Complaint

21 F. T. C.

IN THE MATTER OF

BAKER PAINT & VARNISH COMPANY

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2429. Complaint, June 6, 1935—Order, July 29, 1935*

Consent order requiring respondent company, its officers, etc., in connection with the sale, offer or distribution of paints in interstate commerce, to cease and desist from using the words "Baker's Z & L Combination WHITE Ground in strictly pure Refined Linseed Oil", or the words "zinc and lead" or "zinc lead", or words or initials of like tenor or substance to describe, advertise, brand or label paint or paint pigment, unless and until the pigment in such paint is composed wholly of lead carbonate and zinc oxide, or lead sulphate and zinc oxide in sufficient quantity and proportion to be substantial and effective.

Mr. Astor Hogg for the Commission.

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 has reason to believe that Baker Paint & Varnish Company, a corporation hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate 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 is and at all times hereinafter mentioned was a corporation organized, created and existing under and by virtue of the laws of the State of New Jersey, having its main office and principal place of business in the city of Jersey City in said State. It is and for more than two years last past has been engaged in the business of selling and distributing paint and paint materials to dealers and consumers located throughout the United States and in the District of Columbia, and pursuant to such sales shipments are made to the respective purchasers thereof from respondent's place of business in Jersey City, N. J., into and through various States of the United States other than the State or point of origin of such shipments and in the District of Columbia. There

are in the United States other corporations, persons, and firms engaged in the business of selling and distributing paint and paint materials who, pursuant to such sales, ship their products into and through the various States of the United States other than the States or points of origin of such shipments, and with such other corporations, persons, and firms respondent is and at all times hereinafter mentioned has been in active and substantial competition.

PAR. 2. Among the products sold and distributed by respondent as set forth in paragraph 1 hereof, is a white paint material which material respondent brands, designates, and describes as "Baker's Z & L Combination WHITE Ground in strictly pure Refined Linseed Oil." For more than two years last past respondent has offered for sale and sold and continues to offer for sale and sells said product packed in pails or containers of the capacity of 50 pounds, 25 pounds, and 12½ pounds, all conspicuously branded with the words "Baker's Z & L Combination WHITE Ground in strictly pure Refined Linseed Oil"; and it has further caused and still causes said product to be advertised, represented, offered for sale and sold as and for, and under the brand, designation, and description of "Baker's Z & L Combination WHITE Ground in strictly pure Refined Linseed Oil", and as and for a product whose pigment is composed wholly or in greater part of lead carbonate or lead sulphate and oxide of zinc, or a mixture thereof, whereas in truth and in fact said product is not zinc oxide nor white lead, nor is it a product whose pigment is composed in whole or in greater proportion of lead carbonate or lead sulphate and zinc oxide or a mixture thereof, but the pigment of said product consists principally, predominantly and in greater proportion of other inert materials. The word "Baker's Z & L Combination WHITE Ground in strictly pure Refined Linseed Oil" in the paint trade and to the purchasing and consuming public mean a paint pigment consisting of zinc and lead in approximately equal proportions. Respondent's so-called "Baker's Z & L Combination WHITE Ground in strictly pure Refined Linseed Oil" product is inferior in quality to said zinc oxide and lead as understood by the trade and purchasing public.

PAR. 3. Respondent's branding and representing and describing its product referred to in paragraph 2 hereof, as "Baker's Z & L Combination WHITE Ground in strictly pure Refined Linseed Oil" and as and for a product whose pigment consists solely or in greater part of lead carbonate or lead sulphate and zinc oxide, or a mixture

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thereof, is false, misleading, and deceptive, and had and has the capacity and tendency to and does mislead and deceive a substantial part of the trade and purchasing and consuming public into the erroneous belief that said product is zinc oxide and lead as understood in paint trade and by the purchasing and consuming public, or that the pigment of said product is composed of lead carbonate or lead sulphate and zinc oxide or a mixture thereof.

PAR. 4. The acts and practices of respondent of branding, selling and representing its said product as hereinabove set forth has the capacity and tendency to, and does, mislead and deceive the purchasing public and places in the hands of dealers in said product a means and instrument for committing fraud and deception upon the public, and a means and instrument by which said product may be and is sold and delivered to and purchased by the purchasing and consuming public under and because of the erroneous belief set forth in paragraph 3 hereof.

PAR. 5. There are, among the competitors of respondent mentioned in paragraph 1 hereof, many individuals, partnerships and corporations which sell and distribute in competition with respondent, and in interstate commerce, paint materials similar in general appearance to respondent's so-called "Baker's Z & L Combination WHITE Ground in strictly pure Refined Linseed Oil", and which are in fact zinc oxide and lead whose pigment is composed for the greater part of lead carbonate or lead sulphate and zinc oxide or a mixture thereof, which competitors in nowise misrepresent the character of said material or its ingredients. Respondent's acts and practices hereinabove set forth have the capacity and tendency to, and do, unfairly divert trade from said competitors.

PAR. 6. The aforesaid acts and practices of respondent in the sale and distribution of its said product, under the circumstances and conditions set forth herein, are all to the prejudice of the public and of respondent's competitors, 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 June 6, 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 Section 5 of said Act. On June 21, 1935, the respondent filed its answer to the said complaint, wherein it states that it refrains from contesting the proceedings herein.

Pursuant to the provisions of paragraph (b) of Rule V of the Commission's Rules of Practice (a copy of which provisions were set forth in the notice attached to the complaint which was served upon respondent) respondent admits the allegations of the complaint, waives hearing thereon and authorizes the Commission, without a trial, without evidence and without findings as to the facts or other intervening procedure to make, enter, issue and serve upon it 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 respondent, Baker Paint and Varnish Company, its officers, agents, servants, representatives and employees, in connection with the sale or offering for sale, or distribution of paints in interstate commerce, do cease and desist from:

Using the words "Baker's Z & L Combination WHITE Ground in strictly pure Refined Linseed Oil"; or the words "zinc and lead" or "zinc lead", or words or initials of like tenor, import or substance to describe, advertise, brand or label paint or paint pigment, unless and until the pigment in such paint is composed of a combination consisting wholly of lead carbonate and zinc oxide, or a combination of lead sulphate and zinc oxide, each in sufficient quantity and proportion to be substantial and effective.

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

Syllabus

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IN THE MATTER OF

WILLIAM LITTMAN AND MAX LITTMAN, COPARTNERS,
DOING BUSINESS UNDER THE TRADE NAME AND
STYLE OF IMPERIAL LABORATORIESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 2300. Complaint, Feb. 19, 1935—Decision, Aug. 5, 1935*

Where an individual engaged in the manufacture of permanent hair waving appliances and products, including a permanent hair waving lotion and permanent wave sachets sent to customers through the United States in response to orders secured by advertisements in leaflets and booklets, describing said products,—

- (a) Included the word "Laboratories" in his trade name and prominently featured the same in his aforesaid advertising and represented that said lotion had been perfected by leading chemists, the facts being said preparation was compounded by him at his place of business in which the only equipment consisted of three chemical vats, electrical burning equipment, stoves and weighing scales, and he did not have in his employ any chemist, though employing a consulting chemist who checked the product at the laboratory of the university in which said chemist was an instructor, after its preparation by said individual, nor did he have a laboratory for the making and compounding of such lotion and other similar products, to wit, at the least, a microscope and soapstone sink, soapstone furnace and canopy, glass retort stills, proper density machines, measuring glasses, hydrometers and temperature glasses; and
- (b) Represented that said lotion would wave hair of any character without drying or altering its texture, and the felt used in his sachets was treated so that it would absorb the lotion evenly, assuring a uniform steaming of every curl applied, facts being process of putting permanent waves into the hair necessarily changes texture thereof, and the felt in said sachets had not been treated so that it absorbed the lotion evenly and assured uniform steaming of every curl to which applied;

With capacity and tendency to mislead and deceive the purchasing public into the belief that he maintained a laboratory in which his products were analyzed, compounded and tested, and cause public to purchase his said lotion because of the erroneous belief so engendered, and divert business to himself, to the substantial injury and prejudice of competitors, among whom there are those who truthfully and correctly advertise their said products, and do not in any way misrepresent their trade status, or falsely represent that they maintain and operate a laboratory or laboratories in which their products are compounded:

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. William C. Reeves*, trial examiner.

Mr. Astor Hogg for the Commission.

Mr. Charles F. Consaul, of Washington, D. C., for respondents.