

Complaint

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IN THE MATTER OF

REAL PRODUCTS CORPORATION AND REALFLEX
PRODUCTS CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2261. Complaint, May 9, 1935¹—Order, Dec. 31, 1935*

Where a corporation engaged in the manufacture of automotive and metal specialties, including spark plug cable sets, spark plugs, and porcelains therefor, and in the sale of said products among the various States and territories and in the District of Columbia, had long applied designation "Champion" to its aforesaid products, and through use thereof in its corporate name and on its stationery and cartons, and in its advertising matter, had caused said word to signify and mean to trade and purchasing public that automotive and metal specialties thus designated were its products; and thereafter two companies, engaged under common control in manufacture of similar specialties, including spark plug cable sets, without consent of said corporation, used and continued to use trade designation and name "Champion" for their aforesaid products on their cartons and in their price lists and advertising matter;

With effect of deceiving retail dealers and purchasing public into believing that their aforesaid products were those of said corporation, and with tendency and capacity so to do, and unfairly to divert trade to them from competitors who do not use such deceptive and misleading names for their products:

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. John W. Hildrop for the Commission.

COMPLAINT¹

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 the Real Products Corporation and Realflex Products Corporation, hereinafter referred to as respondents, have been and are 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,

¹ Amended and supplemental.

hereby issues its amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Real Products Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the city of Brooklyn in said State. Respondent Realflex Products Corporation is likewise a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the city of Brooklyn in the State of New York. The above named corporate respondents are engaged in the same business, and manufacture, sell and distribute in interstate commerce the same and identical commodity, and the treasurer of respondent Real Products Corporation is Martin J. Goldstein, who has complete charge of and controls the business and affairs of respondent Realflex Products Corporation; and Federal Trade Commission charges on information and belief that he owns the assets of respondent Real Products Corporation as well as the assets and the capital stock of respondent Realflex Products Corporation, and that the two corporations are engaged in joint enterprises in the conduct of the business hereinafter described and set out.

PAR. 2. Respondents are now and for some time past have been engaged in the manufacture of automotive and metal specialties including spark plug cable sets, and the sale and distribution of said products between and among the various States of the United States, the territories thereof and in the District of Columbia. They now cause and for some time past have caused such automotive and metal specialties, including spark plug cable sets, when sold by them to be transported from their places of business in the city of Brooklyn aforesaid to the purchasers thereof located in the various States of the United States, the territories thereof, and the District of Columbia; and there is now and for some time past has been a constant current of trade and commerce by said respondents in said automotive and metal specialties including spark plug cable sets between and among the various States and territories of the United States and in the District of Columbia. In the course and conduct of their said business the said respondents are now and for some time past have been in substantial competition in commerce between and among the various States and territories of the United States and the District of Columbia with other corporations and with persons, firms, and partnerships engaged in the manufacture and in the sale of automotive and metal specialties including spark plug cable sets.

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PAR. 3. The Champion Spark Plug Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business in the city of Toledo in the State of Ohio. It is now and for more than 15 years last past has been engaged in the manufacture of automotive and metal specialties, including spark plug cable sets, spark plugs and porcelains therefor, and in the sale thereof between and among the various States and territories of the United States and in the District of Columbia, causing such automotive and metal specialties, including spark plug cable sets, spark plugs and porcelains therefor, when sold to be shipped to the purchasers thereof located in the various States of the United States and territories thereof and the District of Columbia, and there is now and for more than 15 years last past has been a constant current of trade and commerce by said Champion Spark Plug Company in said automotive and metal specialties, including spark plug cable sets, spark plugs and porcelains therefor, between and among the various States and territories of the United States and in the District of Columbia.

PAR. 4. For approximately 15 years last past the aforesaid Champion Spark Plug Company has applied the word and trade designation "Champion" to automotive and metal specialties, including spark plug cable sets, spark plugs and porcelains therefor made and sold by it and by the use by it of the word "Champion" for such products, on its stationery, as a part of its corporate name, on its cartons and on printed and advertising matter distributed by it in interstate commerce, has caused the word "Champion" when used as a name for automotive and metal specialties including spark plug cable sets, spark plugs and porcelains therefor, to signify and mean to the trade and to the purchasing public that such automotive and metal specialties including spark plug cable sets, spark plugs and porcelains therefor, are the products of said Champion Spark Plug Company.

PAR. 5. In the course and conduct of their business described in paragraphs 1 and 2 hereof, respondents Real Products Corporation and Realflex Products Corporation, without the permission or consent of said Champion Spark Plug Company have used and continue to use the trade designation and name "Champion" for the automotive and metal specialties, including spark plug cable sets made and sold by them; and without the consent or permission of said Champion Spark Plug Company have used such name and designation "Champion" on their price lists, cartons and advertising matter of such automotive and metal specialties, including spark plug cable sets. The aforesaid use by the respondents of the word "Champion" in the manner set forth herein is false, deceptive and misleading to the

trade and purchasing public and tends to and does divert trade to respondents from their competitors who do not use such deceptive and misleading names for the products manufactured by them and sold by them in interstate commerce; thereby substantial injury is done by respondents to substantial competition in interstate commerce.

PAR. 6. The above acts and practices of respondents 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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 12th day of December, 1934, issued and served its complaint in this proceeding upon the respondent, Real Products Corporation, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act; and thereafter, to wit, on the 9th day of May, 1935, the Federal Trade Commission issued and served upon respondent, Real Products Corporation, a corporation, and respondent, Realflex Products Corporation, a corporation, its amended and supplemental complaint in this proceeding, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by John W. Hilldrop, attorney for the Commission, before Edward M. Averill, a trial examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Irving Beck, President of Real Products Corporation, and Martin J. Goldstein, Secretary of Realflex Products Corporation, the respondents herein, neither of which were represented by attorneys; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, and the testimony, evidence, and briefs in support of the complaint and in defense thereto. No counsel appearing to argue the case, and the Commission having duly considered the same, and being duly advised in the

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premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Real Products Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the city of Brooklyn in said State. Respondent, Realflex Products Corporation, is likewise a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the city of Brooklyn, in the State of New York. The above named corporate respondents are engaged in the same business, and manufacture, sell and distribute in interstate commerce the same and identical commodity, and the treasurer of respondent, Real Products Corporation, is Martin J. Goldstein, who has complete charge of and controls the business and affairs of respondent Realflex Products Corporation, and the two respondent corporations herein are engaged in joint enterprises in the conduct of the business hereinafter described and set out.

PAR. 2. Respondents are now and for some time past have been engaged in the manufacture of automotive and metal specialties including spark plug cable sets, and in the sale and distribution of said products between and among the various States of the United States, the territories thereof and in the District of Columbia. They now cause and for some time past have caused such automotive and metal specialties, including spark plug cable sets, when sold by them, to be transported from their places of business in the city of Brooklyn aforesaid to the purchasers thereof located in the various States of the United States, the territories thereof, and the District of Columbia; and there is now and for some time past has been a constant current of trade and commerce by said respondents in said automotive and metal specialties including spark plug cable sets between and among the various States and territories of the United States and in the District of Columbia. In the course and conduct of their said business the said respondents are now and for some time past have been in substantial competition in commerce between and among the various States and territories of the United States and in the District of Columbia with other corporations and with persons, firms, and partnerships engaged in the manufacture and in the sale of automotive and metal specialties including spark plug cable sets.

PAR. 3. The Champion Spark Plug Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business in the city of Toledo in the State of Ohio. It is now and for more than 15 years last past has been engaged in the manufacture of automotive and metal specialties, including spark plug cable sets, spark plugs and porcelains therefor, and in the sale thereof between and among the various States and territories of the United States and in the District of Columbia, causing such automotive and metal specialties, including spark plug cable sets, spark plugs and porcelains therefor, when sold, to be shipped to the purchasers thereof located in the various States of the United States and territories thereof and the District of Columbia, and there is now and for more than 15 years last past has been a constant current of trade and commerce by said Champion Spark Plug Company in said automotive and metal specialties, including spark plug cable sets, spark plugs and porcelains therefor, between and among the various States and territories of the United States and in the District of Columbia.

PAR. 4. For approximately 15 years last past the aforesaid Champion Spark Plug Company has applied the word and trade designation "Champion" to automotive and metal specialties, including spark plug cable sets, spark plugs and porcelains therefor made and sold by it and by the use by it of the word "Champion" for such products, on its stationery, as a part of its corporate name, on its cartons and on printed and advertising matter distributed by it in interstate commerce, has caused the word "Champion" when used as a name for automotive and metal specialties including spark plug cable sets, spark plugs and porcelains therefor, to signify and mean to the trade and to the purchasing public that such automotive and metal specialties including spark plug cable sets, spark plugs and porcelains therefor, are the products of said Champion Spark Plug Company.

PAR. 5. In the course and conduct of their business described in paragraphs 1 and 2 hereof, respondents Real Products Corporation and Realflex Products Corporation, without the permission or consent of said Champion Spark Plug Company, have used and continue to use the trade designation and name "Champion" for the automotive and metal specialties, including spark plug cable sets made and sold by them; and without the consent or permission of said Champion Spark Plug Company have used such name and designation "Champion" on their price lists, cartons, and advertising matter of such automotive and metal specialties, including spark plug cable sets. The aforesaid use by the respondents of the word

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"Champion" in the manner set forth herein is false, deceptive, and misleading to the retail trade and purchasing public, and has a tendency to and does deceive such retail dealers and the purchasing public by creating the impression that the automotive and metal specialties manufactured and sold in interstate commerce by respondents, including spark plug cable sets, are the products of and are made by the Champion Spark Plug Company of Toledo, Ohio, and has a like tendency and capacity to unfairly divert trade to respondents from their competitors who do not use such deceptive and misleading names for the products manufactured by them and sold in interstate commerce.

CONCLUSION

The practices of said respondents under the conditions and circumstances described in the foregoing findings are all to the injury and 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said 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 ordered, That respondents, Real Products Corporation, a corporation, and Realflex Products Corporation, a corporation, their officers, agents, servants, employees, and representatives in the manufacture, sale and distribution in interstate commerce of automotive and metal specialties, including spark plug cable sets, do cease and desist from:

(1) Representing in any manner that the automotive and metal specialties, including spark plug cable sets, manufactured and sold by respondents are the products of or are made by the Champion Spark Plug Company, of Toledo, Ohio.

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(2) Using the word "Champion" alone or in connection or conjunction with any other word or words in advertising, labeling, or otherwise, to describe or designate automotive and metal specialties, including spark plug cable sets, made by respondents, and from using any other word or words so as to import or imply that said products are made by the Champion Spark Plug Company, of Toledo, Ohio.

(3) Using and displaying the word "Champion" in the advertising of their said commodities on cartons, boxes, or other containers, or by any other method or means of advertising.

(4) The use, by any method, manner or means of advertising or of any representation on cartons, boxes, cards, letterheads, and posters, and in advertisements in periodicals, newspapers, and circulars, of the device or picture of a spark plug at the bottom of which a simulation of electricity is displayed and containing the word "Champion" therein.

And it is hereby further ordered, That the said respondents, Real Products Corporation, a corporation, and Realflex Products Corporation, a corporation, shall within 60 days after the service upon them of this order to cease and desist, file with this Commission a report in writing setting forth in detail the manner and form in which they shall have complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF

PHILIP WONG

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2545. Complaint, Sept. 7, 1935—Order, Dec. 31, 1935*

Where an individual, engaged in the offer, sale and distribution of a product known as "Soft Corn Valuable"—

- (a) Represented in advertisements, circulars and letters that said preparation would cure corns, callouses, all kinds of skin diseases, goiter, cancer, and a number of other diseases and ailments, and that it constituted an efficacious, safe and proper treatment for said various maladies and was a remedy and specific therefor and had therapeutic value in the treatment thereof;
- (b) Set forth on the label directions for use for throat cancer and "for disease use", together with the assertion that the preparation was good for corns and callouses and all kinds of diseases and would "cure them wonderful. No danger. But you must not eat or drink this medicine. Little poison", etc.; and
- (c) Set forth in a circular distributed to prospective purchasers many of the statements and representations hereinbefore referred to and a further one which asserted or implied that its said claims were sanctioned by the Commission through its Special Board;

The facts being that preparation in question was not an effective, safe or proper treatment for all kinds of skin diseases, goiter, cancer, etc., and all diseases generally, and did not have therapeutic value in the treatment of the aforesaid ailments, was not harmless, but was poisonous and dangerous when taken internally, and advertisement, offer for sale, sale or distribution of said preparation had never been authorized, sanctioned or permitted by the Commission or any administrative agency thereof;

With tendency and capacity to confuse, mislead and deceive members of the public into buying said preparation as a cure or effective, safe and proper treatment for the various diseases and ailments mentioned, and to divert trade to said individual from competitors engaged in the sale of preparations and products designed, adapted and used for the treatment or cure of the aforesaid various diseases and ailments; to the injury and prejudice of the public and competitors:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. Allen C. Phelps for the Commission.

Avery, Dooley, Post & Carroll, of Boston, Mass., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Com-