

Complaint

IN THE MATTER OF

MILTON TOCH TRADING AS UNIVERSAL INK COMPANY

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

Docket 2715. Complaint, Feb. 7, 1936—Decision, Mar. 7, 1936

Where an individual engaged for some two years in the sale of liquid and powdered ink—

Represented through letters, labels, circulars and otherwise that he was established in business in 1895 and was the manufacturer of the ink sold and distributed by him under his trade name, notwithstanding fact his business was not established until 1934 and he did not make said products, or own, operate or control any plant or factory which made the same;

With capacity and tendency to mislead and deceive purchasers of his said product into the belief that in buying from him they were dealing with a manufacturer of established business standing and thereby saving middleman's profit, and to confuse, mislead and deceive a substantial number of the public in respect of his business history and status as aforesaid, and into purchasing his products in such erroneous belief, and with effect of diverting trade to him from competitors who do not thus misrepresent their status or history and with tendency so to do, to their substantial injury and prejudice:

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

Mr. DeWitt T. Puckett for the Commission.

Mr. Charles Howard Levitt, of New York City, 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 Milton Toch, an individual, trading as Universal Ink Company, hereafter 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, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Milton Toch, trading as Universal Ink Company, is an individual whose office and place of business is at 1847 Sixty-eighth Street, Brooklyn, N. Y. He is now, and has been since 1934, engaged in advertising and selling powdered and liquid ink between and among the various States of the United States and

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in the District of Columbia, and now causes, and for more than one year last past has caused, such products when sold by him to be shipped from his place of business in Brooklyn aforesaid to the purchasers thereof, some located in the State of New York and others located in various other States of the United States and in the District of Columbia, and there is now, and has been for more than one year last past, a constant current of trade and commerce by the respondent in powdered and liquid ink between and among the various States of the United States and in the District of Columbia.

Respondent is, and for more than one year last past has been, in substantial competition with other individuals, and with firms, partnerships, and corporations engaged in the sale of ink between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent, in the sale and offering for sale of powdered and liquid ink represents, and for more than one year last past has represented, through letters, labels, circulars, and in various other ways, that he was established in business in 1895, and that he is the manufacturer of writing inks of the highest quality, and that the powdered ink offered for sale and sold by him is manufactured and distributed by the Universal Ink Company, which is a trade name used by respondent in the conduct of his business; when in truth and in fact the respondent's business was not established in 1895, but in 1934, and when respondent does not manufacture the dry or powdered ink products offered for sale and sold by him, and does not own or operate, or directly and absolutely control any plant or factory in which the dry or powdered ink offered for sale and sold by him is made or manufactured.

PAR. 3. It is the common belief among wholesalers and retailers and the purchasing public that a superior grade of ink can be purchased direct from the manufacturer at a considerable saving in price. There are those among the purchasing public who prefer to purchase ink direct from the manufacturer and from manufacturers and dealers of established business standing. The representations made by respondent, as alleged in paragraph 2 hereof, have the tendency and capacity to mislead and deceive the purchasers of respondent's powdered ink into the belief that when purchasing said ink from respondent they are dealing with the manufacturer of the ink purchased and thereby are gaining an advantage by saving the middleman's profit.

PAR. 4. The use by the respondent of the representations set out in paragraph 2 hereof, has and has had the capacity and tendency

to mislead and deceive and does and has mislead and deceived the purchasing public into the belief that such representations are true, and to purchase such ink from respondent in such erroneous belief. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of ink who do not misrepresent their status as manufacturers or as to the length of time which they have been in business, who likewise advertise, sell and distribute ink among the various States of the United States and the District of Columbia. By the representations aforesaid, trade is diverted to respondent from such competitors; thereby substantial injury is being done and has been done by respondent to substantial competition in interstate commerce.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice of the public and the respondent's competitors and constitute unfair methods of competition in 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."

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 February 7, 1936, issued and served its complaint in this proceeding upon respondent, Milton Toch, an individual, trading as Universal Ink Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint the respondent filed answer in which he admitted all the material allegations of the complaint. Thereafter, the proceeding came on regularly for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the same, and being fully advised in the 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. The respondent, Milton Toch, is an individual, trading as Universal Ink Company, and is now, and has been since 1934, in business at 1847 Sixty-eighth Street, Brooklyn, N. Y.

PAR. 2. The respondent is, and has been since 1934, engaged in the sale of liquid and powdered ink to purchasers thereof located in the District of Columbia and in various States of the United States other than the State of New York, and has caused and still

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causes his said ink when so sold by him to be transported, in commerce, from his principal place of business in Brooklyn, N. Y., to, into and through said other States and in the District of Columbia to the said purchasers, to whom the said ink was sold by respondent.

PAR. 3. During the time above mentioned and referred to, other individuals, firms and corporations, located in the various States of the United States, have been engaged in the manufacture and in the sale of ink, which they have sold and still sell to the purchasers thereof located in the various States of the United States and in the District of Columbia. The respondent, during the aforesaid time was, and still is, in competition in commerce in the sale of his ink with said individuals, firms and corporations likewise engaged in the sale and distribution of ink among the various States of the United States.

PAR. 4. The respondent, during the aforementioned time, in connection with the offering for sale and in the sale of his liquid and powdered ink represented and still represents, through letters, labels, circulars, and otherwise, that he was established in business in 1895, and that he is the manufacturer of the liquid and powdered ink sold and distributed by the Universal Ink Co., which is a trade name used by respondent in the conduct of his business; when in truth and in fact the respondent's business was not established in 1895 but in 1934, and respondent does not manufacture the dry or powdered ink offered for sale and sold by him and does not own or operate, or directly or absolutely own, operate, or control any plant or factory in which the dry or powdered ink offered for sale and sold by him is made or manufactured.

PAR. 5. It is the common belief among wholesalers and retailers and the purchasing public that ink can be purchased direct from the manufacturer at a considerable saving in price. There are those among the purchasing public who prefer to purchase ink direct from the manufacturer and from manufacturers and dealers of established business standing. The representations made by respondent, above referred to, have the capacity and tendency to mislead and deceive the purchasers of respondent's powdered ink into the belief that when purchasing said ink from respondent they are dealing with a manufacturer of established business standing and thereby are gaining an advantage by saving the middleman's profit.

PAR. 6. The representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive a substantial number of the purchasing public into the belief that respondent has been in business since 1895, and that he is a manufacturer of powdered ink, and to purchase respondent's ink in such erroneous belief.

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PAR. 7. There are among the competitors of respondent, manufacturers and distributors of ink who do not misrepresent their status as manufacturers or the length of time in which they have been engaged in said business, who likewise sell and distribute ink among the various States of the United States and in the District of Columbia. Respondent's acts and practices, as hereinabove set forth, tend to and do divert trade to respondent from such competitors to the substantial injury and prejudice of such competitors.

CONCLUSION

The practices of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a violation 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 matter coming on to be heard by the Commission upon the complaint filed herein on February 7, 1936, and the answer to said complaint filed March 1, 1936, by Milton Toch, an individual trading as Universal Ink Company, respondent herein, in which answer the said respondent states that he desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, and further that he admits all of the material allegations of the complaint to be true, and that without further evidence or other intervening procedure, the Commission may make, issue and serve upon respondent findings of fact and an order to cease and desist from the violations of law charged in the complaint; and the Commission now being fully advised in the premises;

It is hereby ordered, That the respondent, Milton Toch, individually, and trading as Universal Ink Company, and his agents, representatives, servants, and employees, in connection with the offering for sale or sale of ink in interstate commerce, cease and desist from representing, directly or indirectly, that the business of respondent was established prior to 1934, or that the respondent is a manufacturer of powdered ink.

It is further ordered, That the respondent above named within 60 days after the service upon him of this order shall file with the Commission a report in writing, setting forth in detail the manner in which this order has been complied with.

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IN THE MATTER OF

HUBERT J. McQUESTION, WILLIAM M. McQUESTION AND
MRS. MARY M. McQUESTION, TRADING AS NORTH
SHORE CEMENT BURIAL VAULT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2218. Complaint, Aug. 14, 1934—Decision, Mar. 10, 1936*

Where a firm engaged in the sale of concrete burial vaults; in advertising same in newspapers and periodicals and otherwise, and through purported demonstrations with miniature models and through warranties—

Represented that their "Vault Eternal" was water and air-tight, impervious to moisture, invulnerable to mineral action of water and to ground corrosion of every form, and constituted the one successful method of permanent positive protection regardless of conditions, and would become stronger with age and was so constructed as to insure against earth weight and unsightly sunken graves and was guaranteed for all time;

The facts being that said vaults were not always water-proof or air-tight at time of sale, were subject to effects of corrosion, and would not endure as water-proof or air-tight for all time, and, in view of unknown variables in the concrete itself and in certain soil conditions making for rapid destruction of the concrete, presence of corrosives in soil in different localities, limited life of the paint used, and other facts pertaining to said products in actual use, they could not truthfully and fairly be represented as enduring as water-proof for any fixed or stated period of time or as insuring against earth weight and sunken graves, said over-ground demonstrations were therefore deceptive and, due to rarity of disinterment, said warranties, employed as sales inducements, were worthless;

With capacity and tendency to mislead and deceive the public into the belief that products in question were air-tight and water-proof under actual burial conditions and would endure as such for all time:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. E. J. Hornibrook for the Commission.

Mr. L. E. Vaudreuil, of Kenosha, Wis., for respondents.

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 Hubert J. McQuestion, William M. McQuestion, and Mrs. Mary M. McQuestion,