

IN THE MATTER OF
THE DIAMOND MATCH COMPANY

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

Docket 2599. Complaint, Dec. 9, 1935¹—Decision, Mar. 17, 1936

Where a corporation engaged in the manufacture and sale of (a) "Strike-on-the-Box" or "Safety" type matches, thus known and designated for many years, packed and sold in boxes thus labeled, and of a size adaptable for carrying on the person, and (b) "Strike-Anywhere" type matches;

Packed and sold the latter type in small boxes of approximately the same size as those in which the "Strike-on-the-Box" type is packed, marked and labeled "Safety First", and simulating in many respects said "Safety" type, and conspicuously displayed word "Safety" on the larger containers in which it packed its larger size "Strike-Anywhere" matches;

With capacity and tendency to confuse, mislead and deceive purchasers into the belief that its said matches, thus packed, labeled and sold, were in fact "Safety" matches of the "Strike-on-the-Box" type, and with result of causing dealers and consuming public to purchase substantial quantities thereof as and for the genuine safety matches and of placing in the hands of dealers an instrument enabling them to commit a fraud upon the consuming public by thus offering and selling its said product as and for said safety type, and of diverting a substantial volume of trade from competitors, among whom there are those who make and sell or import and sell "Strike-on-the-Box" matches packed and labeled and rightfully represented as "Safety" matches; to the substantial injury of substantial competition in commerce:

Held, That such acts and practices, were each and all to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. J. T. Welch 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 Diamond Match Co., a corporation, hereinafter designated as respondent, is now, and has been, 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 thereto would be in the public interest, hereby issues its amended complaint stating the charges in that respect as follows:

¹ Amended.

PARAGRAPH 1. The respondent, The Diamond Match Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland and having, at all times since its incorporation in 1930, its principal place of business in Baltimore, Md., and a place of business at 30 Church Street in the city of New York, N. Y., with factories for the manufacture of its products in various States.

The respondent, upon its organization, took over the factories and equipment of another corporation that had long been engaged in the manufacture and sale, among other things, of matches. The respondent, since its incorporation and its acquisition of the factories and equipment of said corporation, has continued the business of said corporation and has been, and is now, engaged in the manufacture and sale of matches made by it, as set out in detail in paragraphs 2 and 3 hereof, and the sale of matches made in the Kingdom of Sweden.

PAR. 2. Approximately 50 years prior to the date hereof the sale of matches made from wood sticks or splints, chemically impregnated to prevent glowing of the stick or splint after the match flame is extinguished, and packed in small boxes, or cartons, usually of approximately the same size and containing approximately 40 matches, the outer surface of one or more sides of which box or container has been, and is, coated with a preparation that causes the said matches to ignite when rapidly drawn across the coated surface, was first begun and has since continued in substantial quantity. Said boxes are of a size easily and readily adaptable for use in carrying said matches on the person or in the clothing of the user thereof. Said matches readily ignite only when rapidly drawn across the coated surface of the box or carton in which they are packed and sold. During substantially all of the time that such matches have been made and sold to the public in the United States, they have been, and they are now, known and designated as "strike-on-the-box matches" and as "Safety Matches", and the boxes or cartons in which they have been, and are now, sold to dealers for resale to the public, and to the public for use, have been marked or labeled, among other words, with the words "Safety Match" or "Safety Matches."

Such matches have been, and are now, identified and known by dealers and a substantial portion of the purchasing public, in their purchase, sale, and use during all of said time of said matches, by the words "Safety Match" or "Safety Matches" with which the boxes or cartons were, and are now, usually marked or labeled. Said "strike-on-the-box matches", known and designated by the dealers and pur-

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chasing public as "Safety Matches", have been and are now in demand by a substantial number of the purchasing public, who in purchasing "Safety Matches" expect to purchase and receive "strike-on-the-box matches" containing the qualities hereinabove detailed.

PAR. 3. At all times since its organization, respondent, as had its predecessor for many years prior thereto, has also made and sold, throughout the United States, matches made from wood sticks or splints, chemically impregnated to prevent glowing of the stick or splint after the flame is extinguished, and packed in small boxes or cartons of approximately the same size as the boxes or cartons described and referred to in paragraph 2 hereof, and in many respects simulating said boxes in general appearance and design, the outer surface of one or two sides of which small boxes or cartons has been, and is now, a sanded surface which causes the matches to ignite when rapidly drawn across it. Such matches also readily ignite when rapidly drawn across the surface of any other substance which creates friction between said substance and the match head, and such matches have been for many years, and are now, known to a substantial portion of the purchasing public, in their purchase, sale, and use during all of said time, as "strike-anywhere matches."

PAR. 4. Since the date of its organization, the respondent has sold, and still sells, matches made by it in the United States, and matches made by others in the Kingdom of Sweden that have been, and are, manufactured, packed, and labeled as described in paragraph 2 hereof, the said matches being "strike-on-the-box matches", commonly known and designated as "Safety Matches", and has also sold, and still sells, matches manufactured, as described in paragraph 3 hereof, by it in the United States, the said matches being matches that are commonly designated by the trade and the public generally as "strike-anywhere matches." Said "strike-anywhere matches" manufactured and sold by the respondent as hereinabove set out are packed in boxes or cartons of approximately the same size and general appearance as the boxes or cartons described and referred to in paragraph 2 hereof, the same being the boxes or cartons in which the manufacturers of matches customarily and generally pack matches commonly designated as "strike-on-the-box matches", and commonly known as "Safety Matches." The said boxes or containers in which respondent packs said "strike-anywhere matches" are marked and labeled by the respondent with the words "Safety First Diamond Matches." In truth and in fact, the matches packed in said boxes by the respondent are "strike-anywhere matches" and are not the type of matches known to the trade and public generally as "Safety Matches" which are "strike-on-the-box matches."

PAR. 5. During all of the times hereinabove referred to the respondent, and its predecessor, has also made and sold, throughout the several States of the United States, other matches of the "strike-anywhere" type. These matches are identical with the matches described in paragraph 3 hereof except that said matches are slightly larger in size than the matches described in paragraph 3.

The matches herein referred to are packed in boxes or cartons several sizes larger than the boxes referred to in paragraph 3 hereof and the outer surface of one or two sides of said boxes or cartons has been, and is now, a sanded surface which causes the matches to ignite when rapidly drawn across it. The matches packed in said boxes or cartons have been for many years, and are now, known to a substantial portion of the purchasing public in their purchase, sale, and use as "strike-anywhere matches." The boxes in which said matches are packed by the respondent are labeled with the word "safety", or said word has been conspicuously printed on the outside of said boxes. In truth and in fact, said matches are of the type generally known as "strike anywhere" matches and are not of the type of matches known to the trade and public generally as "safety matches" which are "strike-on-the-box matches."

PAR. 6. The respondent, being engaged in the business of manufacturing and selling all types of matches, as hereinabove described, causes said matches, when sold to said purchasers located in various cities of the several States of the United States, to be transported from its factories or places of business to the purchasers thereof located in States of the United States other than the State or States in which said shipments originated, and in the District of Columbia, and there is now, and has been at all times mentioned herein, a constant current of trade and commerce in said several types of matches herein described, manufactured, or sold by the respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 7. During all of the times hereinabove referred to, other individuals, firms, and corporations, the same being manufacturers or distributors of matches and being hereinafter referred to as sellers, located in various States of the United States, have sold, and have caused to be transported, to wholesale and retail dealers located in the various States of the United States other than the State of the seller, or the State of origin of the shipment, for display and resale to the public, matches, being "strike-on-the-box matches", commonly designated as "Safety Matches", made, packed in boxes or cartons, and marked or labeled as described in paragraph 2 hereof.

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The respondent, in the course and conduct of its business, has been at all times mentioned herein, and is now, engaged in substantial competition with said sellers, as above referred to, in commerce among and between the several States of the United States and in the District of Columbia in the manufacture, importation, distribution, and sale of matches of the several types hereinabove described.

PAR. 8. The sale, by the respondent, as set forth in paragraphs 3, 4, and 5, of matches which readily ignite when struck on surfaces other than the prepared surface of the container in which they are sold, the same being commonly designated as "strike-anywhere matches", packed in small boxes and labeled "Safety First Diamond Matches", the said boxes being of the same size and general appearance as the boxes in which matches which readily ignite only when struck on the prepared surface of the container in which they are sold and which are known as "strike-on-the-box matches" and have been generally designated "Safety Matches" are packed, or packed in boxes similar to those described in paragraph 5, the same being the larger size box, has the capacity and tendency to confuse, deceive, and mislead purchasers of matches into the belief that "strike-anywhere matches" so packaged and labeled and sold by the respondent were, and are "strike-on-the-box matches" designated as "Safety Matches", as described in paragraph 2 hereof, and to purchase substantial quantities of said "strike-anywhere matches", packed and labeled "Safety First Diamond Matches", or packed and labeled as described in paragraph 5, as and for said "strike-on-the-box-safety-matches", in said belief and in reliance on respondent's representations contained on the boxes in which said matches are packed and sold by it.

Further, the false and misleading representations made by the respondent in packaging and selling said "strike-anywhere matches" as and for "strike-on-the-box matches" place in the hands of afore-said wholesale and retail dealers and jobbers an instrument and a means whereby said dealers and jobbers may commit a fraud upon a substantial portion of the consuming public by enabling such dealers to offer for sale, and sell the said matches packed and labeled by the respondent as "Safety First Diamond Matches" or packed and labeled as described in paragraph 5, the same being "strike-anywhere matches", as and for "Safety Matches" as described in paragraph 2, the same being "strike-on-the-box matches."

There are among the competitors of the respondent many who manufacture and sell, or import and sell, matches manufactured, packed, and labeled as described in paragraph 2 hereof, the same being "strike-on-the-box matches" and being labeled "Safety

Matches", and who rightfully and truthfully represent said matches to be "Safety Matches."

PAR. 9. The foregoing false and misleading representations of the respondent have a tendency and capacity to, and do, divert a substantial volume of trade from competitors of the respondent engaged in similar businesses, with the result that substantial quantities of said matches, labeled by the respondent as "Safety First Diamond Matches", or labeled as described in paragraph 5, are sold to said dealers and purchasers, and to the consuming public, on account of said belief induced by said false and misleading representations and as a consequence thereof, a substantial injury has been done by the respondent to substantial competition in commerce among the several States of the United States and in the District of Columbia, as hereinabove detailed.

PAR. 10. The above acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors, and have been, and are, unfair methods of competition within the meaning and intent 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 December 9, 1935, issued and served its amended complaint in the proceeding upon the respondent, The Diamond Match Co., charging it 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 its answer and subsequently filed a motion to withdraw said answer and filed a substituted answer in which it stated that it waived hearing on the charges set forth in the complaint, that it did not wish to contest the proceeding, that it admitted all of the material allegations of the complaint to be true, and that it consented that the Commission may, without trial, without further evidence, and without any intervening procedure, make, enter, issue, and serve upon the said respondent, its findings as to the facts and conclusion based thereon and an order to cease and desist from the methods of competition alleged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on said amended complaint and the substituted answer, and the Commission having duly

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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, The Diamond Match Co., is a corporation organized and doing business under the laws of the State of Maryland. Since its incorporation in 1930, it has maintained a place of business in the city of New York, N. Y., at 30 Church Street. It also operates factories in various States of the United States for the manufacture of its products. Since its organization, respondent has sold and now sells, matches made by it in the United States that are manufactured, packed, and labeled as described in paragraph 2 hereof, said matches being "Strike-on-the-Box" matches, commonly known and designated as "Safety" matches, and has also sold, and now sells, matches manufactured, packed, and labeled as described in paragraph 3 hereof, said matches being matches that are commonly designated by the trade and the public generally as "Strike-Anywhere" matches.

The respondent, being engaged in the business of manufacturing and selling all types of matches, as hereinafter described, causes said matches, when sold to said purchasers located in various States of the United States, to be transported from its factories or places of business to the purchasers thereof located in States of the United States other than the State or States in which said shipments originated, and in the District of Columbia, and there is now, and has been, a constant current of trade and commerce in said several types of matches herein described, manufactured or sold by the respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 2. Approximately 50 years prior to the date hereof, the sale of matches made from wood sticks or splints which had been chemically impregnated to prevent glowing of the stick or splint after the match flame is extinguished was first begun. One type of said matches is packed in small boxes usually of approximately the same size and containing approximately 40 matches each. The outer surface of one or more sides of said boxes is coated with a preparation that causes the said matches to ignite when rapidly drawn across the said coated surface and said matches readily ignite only when rapidly drawn across the coated surface of the box in which they are packed and sold. Said boxes are of a size easily and readily adaptable for use in carrying said matches on the person or in the clothing of the user thereof.

During substantially all of the time that this type of match has been made and sold to the public in the United States, it has been known and designated as "Strike-on-the-Box" type or as "Safety" matches and the boxes in which said type has been sold to dealers for resale, and to the public for use, have been marked or labeled with the words "Safety Match" or "Safety" matches. This type of match has been, and is now, identified and known by dealers and the purchasing public, in the purchase, sale, and use of said matches, as "Safety" matches. Said "Strike-on-the-Box" type has been, and is now, in demand by a substantial number of the purchasing public who, in purchasing matches labeled "Safety" matches, expect to purchase and receive matches of the "Strike-on-the-Box" type which possess the qualities hereinabove detailed.

PAR. 3. For a number of years the respondent has made and sold another type of match made from wood sticks or splints chemically impregnated to prevent glowing of the stick or splint after the flame is extinguished. This type of match is packed in small boxes of approximately the same size as the boxes in which "Strike-on-the-Box" type is packed. The outer surface of one or two sides of said boxes bears a sanded surface which causes the matches to ignite when rapidly drawn across it and, in many respects, simulates the boxes in which the "Strike-on-the-Box" type is packed and sold. This type also readily ignites when rapidly drawn across the surface of any other substance which creates friction between said substance and the match head. This type has been for many years known to the purchasing public in the purchase, sale, and use thereof as "Strike-Anywhere" matches.

The said boxes in which respondent packs said matches of the "Strike-Anywhere" type are marked and labeled by the respondent with the words "Safety First Diamond Matches" as a brand name. The matches packed in said boxes so labeled by the respondent are the "Strike-Anywhere" type and are not of the "Strike-on-the-Box" type of match known to the trade and public generally as "Safety" matches.

The respondent has also manufactured and sold throughout the United States other matches of the "Strike-Anywhere" type. These matches are identical with other matches of the "Strike-Anywhere" type in chemical composition of the tip thereof, but are slightly larger in size. They are packed in boxes bearing sanded surfaces similar to those in which the smaller size "Strike-Anywhere" type is packed, but said boxes are several times larger than the smaller size boxes. The matches packed in said boxes have for many years been likewise known to the purchasing public in the purchase, sale and use thereof as "Strike-Anywhere" matches.

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The boxes in which said larger size matches are packed by the respondent are labeled with the word "Safety", or said word has been conspicuously printed or displayed on the outside of said boxes. These matches are not of the type known to the trade and public generally as "Safety" matches but are of the type known as "Strike-Anywhere" matches.

PAR. 4. For more than 6 years, other corporations, firms, and individuals, the same being manufacturers or distributors of matches and being hereinafter referred to as sellers, located in various States of the United States, have sold, and have caused to be transported, to wholesale and retail dealers located in the various States of the United States other than the State of the seller, or the State of origin of the shipment, for display and resale to the public, matches of the "Strike-on-the-Box" type, commonly designated as "Safety" matches, made, packed in boxes and marked or labeled as described in paragraph 2 hereof.

The respondent, in the course and conduct of its business, has been, since 1930, engaged in substantial competition with said sellers, in commerce among and between the various States of the United States and in the District of Columbia in the manufacture, importation, distribution and sale of matches of the several types hereinabove described.

PAR. 5. The acts of the respondent in labeling the boxes of its small size "Strike-Anywhere" type matches with the words "Safety First Diamond Matches" as a brand name, and in labeling the boxes of its larger size "Strike-Anywhere" type with the word "Safety", serve as representations to the purchasing public that said matches so marked or labeled, are in fact "Safety" matches of the "Strike-on-the-Box" type. Said acts and representations have the capacity and tendency to confuse, deceive and mislead purchasers of matches into the belief that matches of the "Strike-Anywhere" type so packaged, labeled and sold by the respondent, are in fact "Safety" matches of the "Strike-on-the-Box" type. As a result of this erroneous belief, and acting in reliance on respondent's representations, the public has purchased substantial quantities of matches of the "Strike-Anywhere" type that are packed and labeled "Safety First Diamond Matches", or that are packed and labeled, among other words, with the word "Safety" as and for "Safety" matches of the "Strike-on-the-Box" type.

Further, the representations made by the respondent in packaging and selling said matches of the "Strike-Anywhere" type as and for "Strike-on-the-Box" type, place in the hands of aforesaid wholesale

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and retail dealers an instrument and a means whereby said dealers may commit a fraud upon a substantial portion of the consuming public by enabling such dealers to offer for sale, and sell the said matches packed and labeled by the respondent as "Safety First Diamond Matches", or packed and labeled with the word "Safety", the same being "Strike-Anywhere" matches, as and for "Safety" matches, the same being of the "Strike-on-the-Box" type.

There are among the competitors of the respondent many who manufacture and sell, or import and sell, matches manufactured, packed, and labeled as described in paragraph 2 hereof, the same being "Strike-on-the-Box" type and being labeled "Safety" matches, and who rightfully and truthfully represent said matches to be "Safety" matches.

PAR. 6. The representations of the respondent, as above set out, have a tendency and a capacity to, and have, diverted a substantial volume of trade from competitors of the respondent engaged in similar businesses who do not engage in similar practices. As a result thereof, a substantial quantity of said matches of said "Strike-Any-where" type labeled by the respondent as "Safety First Diamond Matches" or labeled by use of the word "Safety", are sold to dealers and to the consuming public on account of the beliefs induced, as herein set out. Substantial injury has been done by the respondent to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondent are each and all to the prejudice of the public, and to the competitors of the respondent 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."

ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission upon the amended complaint filed herein on December 9, 1935, and the substituted answer, the respondent, The Diamond Match Co., having filed its answer to the complaint in this proceeding and having subsequently filed a motion to withdraw the answer heretofore filed and tendered in lieu thereof a consent answer, in which answer respondent states that it desires to waive hearing and not to contest the proceeding, and that it admits all of the material allegations of the com-

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plaint to be true, and consents that the Commission may, without trial, without further evidence, and without intervening procedure, make, enter, issue, and serve upon the respondent, its findings as to the facts and its conclusion thereon and an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having considered the amended complaint and said substituted answer, and being fully advised in the premises;

It is now ordered, That the respondent, The Diamond Match Company, be, and it is hereby, permitted to withdraw the answer heretofore filed by it under date of November 8, 1935, and to file a consent answer in lieu thereof and the substituted answer tendered by it is herewith received and filed.

It is also ordered, That the respondent, The Diamond Match Company, its officers, agents, servants, and employees, in connection with the manufacture, offering for sale and sale, of matches, in commerce among and between the various States of the United States and in the District of Columbia, cease and desist from:

1. The use of the word "Safety" as part of any brand name used by it in labeling matches that are in fact matches of the type commonly known and designated as "Strike-Anywhere" matches.

2. Using the word "Safety", either alone or in conjunction with the word "First", or in conjunction with other words, or in any way, as a brand name, or to designate or describe any type of match other than the type commonly designated as "Strike-on-the-Box" matches which readily ignite only when the head thereof is drawn across a specially prepared coating on the box in which said matches are sold.

It is further ordered, That respondent shall, within 90 days from the date of service upon it of a copy of this order, file with the Commission a report in writing, setting forth the manner and form in which it has complied with the order herein set forth by the Commission.

Syllabus

IN THE MATTER OF

T. O. LOVELAND AND J. L. RECORDS, DOING BUSINESS
AS COMMERCIAL MANUFACTURING COMPANY AND
BRENARD MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2617. Complaint, Nov. 7, 1935—Decision, Mar. 17, 1936*

Where two individuals engaged in the sale and distribution of radios—

- (a) Represented themselves through advertising booklets, price lists, letter-heads, distributors' agency agreements, and other advertising literature as manufacturers of the radios distributed and sold by them and featured their two trade names, in each of which was included word "Manufacturing", on all their said literature, facts being that they were not manufacturers of said radios, but were engaged solely in distributing and selling such products made by others;
- (b) Falsely represented their said radios in their advertising literature as of superior quality and sold at exceptionally low prices, facts being that said products were only of average quality, lacked many features included in first-class radios, and were priced higher than comparable products of competitors;
- (c) Grossly misrepresented, in soliciting through salesmen supplied with their said advertising literature, execution of their dealer agency agreements and purchase of the demonstrator units and payment of sums called for thereby, advantages to dealer as to supposed exclusive territory, guaranteed profits or sales, relief of and reimbursement for unsold stock, furnishing of floor stocks, consignment shipments, liberal credit and handling of dealer customers' installment paper, and advertising and sales assistance to be rendered by them, reason for required deposit, and their own role as simply that of establishing dealers and opening up new territory at no profit or even initial loss, and set forth that they were selling their products in cooperation with dealer, through the direct advertising system, and if dealer could not make a profit, neither could they; facts being they made a substantial profit on demonstrator units, cost to them of their said products was considerably less than represented, retailers could not reasonably expect to sell the same on the open market at any price closely approximating that fixed or suggested, and said representations and promises as to credit and other assistance and all other matters were entirely or substantially false and unfulfilled;

With result that they placed in the hands of their said salesmen a means whereby the unscrupulous were enabled to commit a fraud upon retail dealers, a substantial number of such dealers and of the purchasing public were misled into the belief that they were manufacturers and their said products were of superior quality and low priced, and that dealers would receive exclusive territory, credit, and other benefits above set forth and suggested, a number of retailers executed said agreements which substantiated aforesaid claims or were susceptible of such interpretation and did