

Syllabus

IN THE MATTER OF
JOHNSON MANUFACTURING COMPANY AND JOHN C.
JOHNSON

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

Docket 2514. Complaint, Aug. 14, 1935—Decision, Mar. 31, 1936

Where a corporation engaged in the sale of iron cooking utensils through solicitation by its agents or representatives, in competition with others engaged in the sale of like articles including aluminum cooking utensils, and acting at the instance of its president and principal stockholder—

(a) Included in its corporate or trade name the word "Manufacturing", notwithstanding fact it was not a manufacturer, but contracted with foundries or factories for the manufacture to its specifications of the goods which it sold; with effect of misleading and deceiving a substantial number of the purchasing public into the false belief that in buying from its representatives they were purchasing directly from the manufacturer and thereby effecting a financial saving through elimination of the profit of the middleman, and of causing a substantial diversion of trade from competitors; and

Where said corporation and said individual, in soliciting the purchase of their said products—

(b) Exhibited to customers a paper slip displaying said company's name and words "Regular price \$7.50—Advertising price \$4.50" and represented that \$7.50 was the regular price, but that special price of \$4.50 would be allowed to customer contacted, facts being that \$4.50 was the usual price at which product was and had been continually offered to the public; with intent and effect of misleading and deceiving a substantial number thereof into belief that by making purchase at figure offered they were securing a greater value than they might otherwise have secured, and were effecting a financial saving from the purported usual price of \$7.50 by purchasing then and there, and of causing a substantial diversion of trade from competitors; and

(c) Circulated through the various States pamphlets and advertising matter containing statements to effect that use of aluminum cooking utensils was deleterious to health and poisonous and furthered growth of cancer, and other statements of similar tenor, and caused their agents or representatives to circulate such statements orally, facts being that medical and scientific evidence produced was to effect that aluminum utensils did not have any such results and said statements were false; with effect of misleading and deceiving a substantial number of the purchasing public and inducing them to purchase commodities offered in reliance upon such mistaken belief, and of causing a diversion of trade from substantial numbers of competitors engaged in sale of such aluminum, or iron utensils without such misrepresentation, and with capacity and tendency so to mislead and deceive:

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. John W. Norwood*, trial examiner.

Mr. Alden S. Bradley for the Commission.

Mr. Jesse R. Johnson, of Birmingham, Ala., for respondent.

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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 Johnson Manufacturing Co., a corporation, and John C. Johnson, hereinafter referred to as respondents, have been and now are 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. The respondent, Johnson Manufacturing Co., is a corporation, incorporated under the laws of the State of Alabama, and having its principal office and place of business in the city of Birmingham, State of Alabama. The respondent, John C. Johnson, is a natural person, president of and chief stockholder of such corporation above named, and has his principal office and place of business in the city of Birmingham, State of Alabama. The principal business of such corporation consists of the sale and offering for sale of iron cooking utensils through the medium of personal solicitation and contacts, and it now maintains and has, since December 1, 1934, maintained a constant current of trade and commerce among the various States of the United States and the District of Columbia. The general method of effecting sales consists of the distribution of certain pamphlets, the statements of which are hereafter set forth, and said pamphlets constitute a disparagement of other cooking utensils of a different metal, and specifically aluminum.

The tenor and effect of the contents of the pamphlets herein referred to consists of statements falsely alleging that aluminum used in cooking utensils is poisonous. The pamphlets further contained false statements allegedly having been made by doctors in support of such contention that aluminum used in cooking utensils is poisonous and is an irritant to living tissues. Further statements to the effect that aluminum used in cooking utensils causes or furthers the growth of cancers are contained in such pamphlets.

PAR. 2. The said respondents and each of them have been and now are engaged in the selling and offering for sale in the various States of the United States and in the District of Columbia of merchandise of a general character known as and classified to be cooking utensils, and they are now and have been, since the date of their undertaking such endeavor, to wit, December 1, 1934, in substantial competition with other corporations, firms, and copartnerships engaged in the

sale of like articles between and among the various States of the United States and the District of Columbia.

PAR. 3. The uttering and issuing of the pamphlets as herein complained constitute a detriment and injury to, and consist in themselves of unfair methods of competition with competitors of the respondents within their own industry. Such false disparagement of those articles offered for sale by competitors of the respondents occasion and entail an actual loss of revenue and of profit by such competitors.

PAR. 4. The respondent corporation, under the direction and control of its president and principal stockholder, John C. Johnson, falsely maintains and causes to be maintained as part of the corporate name of respondent corporation the word "Manufacturing" when, in fact, the said corporation does not maintain a factory and does not manufacture the goods offered by it for sale, and the maintaining of the word "Manufacturing" as a part of the corporate name of the respondent corporation has a capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the belief that the goods so offered by the respondents for sale are in fact manufactured by the respondent corporation.

There are among the members of the purchasing public a substantial number who have an actual preference for purchasing merchandise directly from manufacturers, and the false use of the word "Manufacturing" as above related, does, among other things, mislead and deceive such portion of the purchasing public into the belief that they are in fact purchasing directly from a manufacturer, and are avoiding the payment of the so-called middleman's profit.

PAR. 5. In the furtherance by respondents of their efforts to effectuate sales they consistently offer for sale to members of the purchasing public the goods herein described, and exhibit to such potential purchasers an order blank whereon is the statement that the regular price of said commodities offered for sale is \$7.50, and that an advertising price may be obtained at \$4.50. Such statement is false for the reason that the regular and habitual price of the commodities so represented is \$4.50, and the false representation to the purchasing public that the regular price thereof is \$7.50, but that an advertising price may be obtained at \$4.50, has a capacity and tendency to and does in fact mislead and deceive the members of the purchasing public so contacted and causes them to believe that such merchandise is of a substantially better grade and higher value than merchandise offered by competitors for an equal sum, and the habitual and continuous use of such false representation

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constitutes a substantial injury to a substantial number of competitors of the respondents.

PAR. 6. There are in the various States of the United States and in the District of Columbia other corporations, firms, persons, and copartnerships engaged in the business of selling and offering for sale cooking utensils of various derivatives and manufacture, and made of and from various metals among which is aluminum, and pursuant to such sales, such firms, persons, corporations, and copartnerships make shipments from their various respective places of business and places of storage to the purchasers of such materials in the various States of the United States and the District of Columbia.

PAR. 7. The acts and practices of the respondents as above set forth are prejudicial and injurious to the competitors of such respondents, and have occasioned and now occasion substantial injury to substantial competition in interstate commerce.

The acts and practices done and caused to be done by the respondents were and are, each and all, to the prejudice of the public and of the respondents' competitors, because there are among the members of the purchasing public a substantial number who are materially influenced and affected by the acts hereinabove complained of, and such members of the purchasing public are persuaded thereby to purchase the goods offered for sale by the respondents in preference to the goods of like metal and for like purpose which may be offered for sale by competitors of the respondents, and such acts and practices above related constitute unfair methods of competition in commerce within the meaning and intent 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 14th day of August 1935, issued and served its complaint in this proceeding upon the respondents, Johnson Manufacturing Co., a corporation, and John C. Johnson, an individual, 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 the respondent, John C. Johnson, filed an answer thereto; the respondent, Johnson Manufacturing Co., a corporation, was in default of an answer. Testimony and evidence

in support of the allegations of said complaint were introduced by Alden S. Bradley, attorney for the Commission, before John W. Norwood, an examiner of the Commission theretofore duly designated by it and in defense of the allegations of the complaint by J. R. Johnson, attorney for the respondent, J. C. Johnson; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and evidence, brief in support of the complaint and each of the above-named respondents being in default of a brief and not being represented at the time and place of such final hearing, the cause was submitted without argument; 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, Johnson Manufacturing Co., is a corporation existing under and by virtue of the laws of the State of Alabama having its principal office and place of business in the city of Birmingham, and State of Alabama.

Respondent, John C. Johnson, is an individual, is president and principal stockholder of Johnson Manufacturing Co., and has his principal office and place of business in the city of Birmingham and State of Alabama.

PAR. 2. The principal business of each of the respondents is the sale of iron cooking utensils of various shape and design through the medium of sales solicitation by agents or representatives of the respondents. The respondents and each of them have caused and now cause agents or representatives throughout the State of Alabama and various other States of the United States other than the State of Alabama to make personal contact with potential customers for the purpose of selling to such potential customers the products manufactured by the respondents. Such agents or representatives procure orders for the commodities manufactured by the respondents and such orders are filled by the respondents and the respondents constantly and continuously sell, ship, and transport, and cause to be sold, shipped, and transported from the State of Alabama, and to and throughout the various States of the United States other than the State of Alabama, the commodities manufactured by it and sold in the manner above related.

PAR. 3. In the conduct of the business aforesaid respondents are now and have been in substantial competition with other corpora-

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tions, firms, and copartnerships engaged in the sale of like articles between and among various States of the United States. Among the competitors of the respondent are those who manufacture and sell in the various States of the United States cooking utensils made of aluminum.

PAR. 4. In the conduct of its business as aforesaid the respondent, Johnson Manufacturing Co., a corporation, acting under the direction and at the instance of the individual respondent, John C. Johnson, has used and now uses as a part of the corporate or trade name of the respondent, Johnson Manufacturing Co., the word "manufacturing."

The respondent, Johnson Manufacturing Co., a corporation, is not a manufacturer and maintains, owns, or controls no factory or foundry in which the goods vended by the respondents as aforesaid are manufactured.

The respondent, Johnson Manufacturing Co., contracts with foundries or factories to manufacture for the respondent the goods sold by the respondents as aforesaid upon specifications furnished by the respondent, Johnson Manufacturing Co., through the respondent, John C. Johnson.

PAR. 5. There is a common belief among members of the purchasing public that in making purchases direct from the manufacturer of commodities a substantial financial saving is effected in that the profit of the middleman is thereby eliminated and the sums of money represented by the usual profit of such middleman are directly saved the purchaser or purchasers. There is a preference among a substantial number of the members of the purchasing public for purchasing commodities direct from the manufacturer of the same for the purpose of effecting such a financial saving.

PAR. 6. In the conduct of the business of the respondents and in soliciting customers or potential customers to purchase the products offered by them for sale they now use and have used in connection with the solicitation in the manner above set out, a paper slip whereon appear the words "The Johnson Manufacturing Company" and the words "Regular price \$7.50—Advertising price \$4.50", which said slip of paper was exhibited to customers or prospective customers for the purpose of inducing them to purchase the commodities offered for sale by the respondents. The respondents represented and caused to be represented in addition thereto to potential customers in the solicitation of orders that the regular price of the commodities vended was \$7.50 but that a special price of \$4.50 would be allowed to the customer contacted.

The price at which such commodity was offered to the purchasing public was almost invariably, if not invariably, \$4.50, and such price was and is the usual and customary price at which such commodity now is and has been continuously offered to the purchasing public.

The purpose and intention of the respondents in making and causing to be made the representations aforesaid was to induce members of the purchasing public to purchase the commodity so offered in the belief that they were obtaining such commodity at a financial saving and in the belief that if such commodity was not then purchased the regular price of \$7.50 would later be asked; and a substantial number of the members of the purchasing public formed such impression and belief, and relying upon such erroneous belief purchased the commodities so offered by the respondent.

PAR. 7. In the conduct of the business aforesaid the respondents and each of them published and circulated and caused to be published and circulated throughout the various States of the United States, various and sundry pamphlets, advertisements, and other written matter containing statements to the effect that the use of aluminum cooking utensils was and is deleterious to the health, that it is poisonous, that the same furthers the growth of cancer, and other statements of like tenor and effect. The respondents and each of them likewise caused agents or representatives orally to circulate statements of the same portent.

The medical and scientific evidence produced in the instant case is to the effect that the use of aluminum cooking utensils is not deleterious to health, is not poisonous, and does not have the tendency to further the growth of cancer.

PAR. 8. In the conduct of their business respondents caused their agents or representatives to go into States other than the State of Alabama to solicit orders for the commodities manufactured and sold by the respondents. Such agents or representatives procured numerous orders and sold and delivered goods to the purchasers thereof, and the respondents shipped, transported, and delivered to agents or representatives in States other than the State of Alabama the commodities listed in such orders.

In connection with the solicitation of orders as aforesaid in States other than the State of Alabama, the agents and representatives of the respondents used in connection with their solicitations oral statements, pamphlets, circulars, and other written matter containing statements substantially to the effect that the use of aluminum cooking utensils was poisonous, was deleterious to the health, furthered growth of cancer, and other similar statements concerning such utensils.

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PAR. 9. The use of the word "manufacturing" in connection with the corporate or trade name of respondent had and has the tendency and capacity to and did, and does, mislead and deceive a substantial number of the members of the purchasing public into the false belief that they, in purchasing from agents or representatives of such Johnson Manufacturing Co., were and are purchasing directly from the manufacturer of the commodities offered by the said respondents for sale and were and are thereby effecting a financial saving through the elimination of the profit of the middleman.

PAR. 10. The use of the paper slip exhibited to customers and potential customers in the solicitation of orders as above related, upon which slip appear words and letters indicating that the price of \$4.50, for which price the commodity was offered to the person to whom such slip was exhibited, was a special price and that the price of \$7.50 also exhibited on such paper slip was the usual and customary price of such commodity, was deceptive. The oral representations of the agents or representatives to the same effect was likewise deceptive. Such a practice had a capacity and tendency to, and did, mislead and deceive a substantial number of the members of the purchasing public into the false belief that by making the purchase of the commodity at the price of \$4.50 they were securing a greater value than they might otherwise have secured and that by making the purchase at that particular time and place they were effecting a financial saving from the purported usual and customary price of \$7.50.

Such a practice had and has a capacity and tendency to mislead and deceive the purchasing public to their injury and has caused and now causes a substantial diversion of trade from a substantial number of competitors of the respondents in interstate commerce.

PAR. 11. The use by the respondents Johnson Manufacturing Co., in connection with its business in interstate commerce, of the word "manufacturing" had and has caused a substantial diversion of trade from competitors of the respondent in interstate commerce who do not falsely represent, by the use of the word "manufacturing" in connection with the use of their corporate or trade name, that they are manufacturers of the commodity or commodities vended by them and has likewise caused a diversion of trade from a substantial number of competitors in interstate commerce who actually manufacture the commodity or commodities vended by them.

PAR. 12. The use by the respondents and each of them in connection with the conduct of their business in interstate commerce as aforesaid of pamphlets, circulars, and other methods of advertising containing statements and representations that the use of aluminum cooking utensils is deleterious to health, is poisonous, promotes the

growth of cancer, and other statements and representations of similar import, had and has the capacity and tendency to, and did and does, mislead and deceive a substantial number of the members of the purchasing public into the false belief that the statements and representations therein were and are true and a substantial number of the members of the purchasing public believe such statements and representations to be true and have acted upon them and have been thereby induced to purchase the commodities of the respondents.

Such acts and practices likewise have caused a diversion of trade from a substantial number of competitors engaged in the sale or offering for sale in interstate commerce of iron cooking utensils who do not falsely represent that aluminum cooking utensils are deleterious to health, are poisonous, further the growth of cancer, or other statements of the same import.

Such practices likewise have caused and now cause diversion of trade from a substantial number of competitors of the respondents engaged in the sale or offering for sale in interstate commerce of aluminum cooking utensils.

CONCLUSION

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondents' competitors, 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 proceeding having been heard before the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and evidence taken herein, brief filed on behalf of the Federal Trade Commission, and the Commission having made its findings as to the facts and conclusion that the respondents, Johnson Manufacturing Co., a corporation, and John C. Johnson, 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 now ordered, That the respondent, Johnson Manufacturing Co., a corporation, its officers, agents, representatives, and employees,

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in connection with the sale or offering for sale in interstate commerce of cooking utensils, cease and desist from:

Representing through the use of its corporate or trade name and through the use of advertising literature, through oral statements, or in any other manner, that said respondent is a manufacturer of kitchen utensils.

It is further ordered, That the respondents, Johnson Manufacturing Co., a corporation, and John C. Johnson, an individual, and the representatives, agents, servants, and employees of each of them, in connection with the sale or offering for sale in interstate commerce of cooking utensils by them or either of them, cease and desist from:

(1) Representing that the usual, regular, and customary selling price of said cooking utensils is a special or advertising price, and from representing that a fictitious or marked-up price of said cooking utensils is the customary, usual, or regular price;

(2) Representing or causing to be represented, through advertising literature, oral statements, or in any other manner, that the use of aluminum cooking utensils is deleterious to the health, is poisonous, or that said use furthers the growth of cancer, and from making other statements or representations of similar tenor and effect, falsely disparaging or tending falsely to disparage the quality or value of such aluminum cooking utensils with respect to the effect the use of the same might have on the health of the user or users thereof.

It is further ordered, That the respondents and each of them shall within 90 days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with and conformed to this order.

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IN THE MATTER OF

EDS MANUFACTURING COMPANY ET AL.

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

Docket 2660. Complaint, Dec. 18, 1935—Decision, Mar. 31, 1936

Where 11 corporations engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes and in the sale thereof to photoengraving houses and large newspaper chains located in other States, and together making and selling more than 90 percent of the total volume of such products used for such purpose and sold in commerce—

(a) Entered into an understanding or agreement among themselves, and with their association formed pursuant to such undertaking, to fix and maintain uniform prices, terms, and discounts for the sale of such products and to cooperate with each other in the enforcement and maintenance of such prices, etc., by exchanging information through said association as to the prices, etc., at which they were selling and offering to sell such products as aforesaid; and

Where said association, organized as aforesaid—

(b) Acted as a clearing house for the exchange of information submitted by said members, including reports as to sales of zinc and copper plates together with prices, discounts, and terms at which said zinc and copper plates were sold or offered, and held regular meetings at which its said members attended and at which they discussed trade and competitive conditions in said industry, and agreed upon and established trade policies to be followed and prices to be charged in the sale and distribution of their said products; and

Where four individuals, officers of such association and as such in full and complete charge of its activities—

(c) Conducted the meetings of its members and collected statistical information therefrom and compiled and disseminated the same thereto, all in pursuance and furtherance of the object and aims of the association as hereinabove set forth;

With the result of unduly tending to substantially lessen, restrict, and suppress competition in the sale of zinc and copper engravers plate throughout the several States and particularly in prices quoted and discounts allowed, and to enhance prices thereof above those which had theretofore prevailed and which would prevail under normal, natural, and open competition between said members, and to tend to a monopoly in said corporations in the manufacture and sale of such plates in commerce:

Held, That such acts and practices were to the prejudice of the buying public generally and customers of said members in particular, and constituted unfair methods of competition.

Mr. Everett F. Haycraft and Mr. Reuben J. Martin for the Commission.

Mr. Sol A. Rosenblatt, of New York City, for respondents.