

Complaint

IN THE MATTER OF
RADIATOR SPECIALTY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2586. Complaint, Oct. 17, 1935—Decision, Apr. 6, 1936*

Where a corporation engaged in sale of a cleaning fluid under name "Perfo"—

- (a) Represented on labels affixed to containers of said cleaner and on showcase or display cards that said preparation would remove spots without injury to color or fabric through such statements as "Does not injure the most delicate fabrics", facts being on fabrics or material dyed with certain kinds of dyes such as nonfast dyes it impairs and affects the colors thereof by causing the same to bleed or run; and
- (b) Represented on such labels and showcards that use thereof left no spot or ring through such statements as "Absorbs the spot" and "Leaves no rings", facts being that its use on certain fabrics or materials and under certain conditions or circumstances does result in appearance of a spot or ring on such fabrics or materials;

With effect of misleading and deceiving purchasing public in aforesaid respects and inducing it to buy said cleaning product in such erroneous belief and of affording retail merchants opportunity to perpetrate a fraud on such public and of diverting unfairly trade to it from competing individuals and concerns engaged in sale of similar products truthfully and honestly advertised and labeled by them and with tendency and capacity so to mislead, deceive, and divert:

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

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

Mr. Richard L. Kennedy for the Commission.

Mr. Richard G. Thigpen, of Charlotte, N. C., 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 Radiator Specialty Co., a corporation, hereinafter referred to as the respondent, has been and is 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, hereby issues its complaint, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of

Complaint

22 F. T. C.

North Carolina, with its principal office and place of business at 315 East Fifth Street, Charlotte, N. C. Respondent is now and for more than 2 years last past has been engaged in the sale of a cleaning fluid advertised and sold by it as "Perfo", and in the distribution thereof in commerce between and among the various States of the United States and the District of Columbia, causes and has caused said product, when sold, to be transported in interstate commerce from its place of business in the State of North Carolina, to purchasers thereof, some located in said State, and others located in various other States in the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent is now and has been, for more than 2 years last past, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture, sale, and distribution of cleaning fluids and similar products, in interstate commerce between and among the various States in the United States and the District of Columbia, used for purposes similar to the purposes for which respondent's products are used.

PAR. 3. In the course and conduct of its said business, as hereinabove described, the respondent, in soliciting the sale of and selling, in interstate commerce, a cleaner sold by it under the name of "Perfo", caused, and still causes, its said product to be placed and sold in cans, or containers, with labels affixed to said containers, and with showcase, or display cards, reading:

Perfo cleans thoroughly and is safe to use. It will not burn or explode and cannot injure fabric or color;

Will not harm fabrics, material, or colors;

Will not injure fabrics or color;

Does not injure the most delicate fabrics;

Perfo absorbs the spot;

Leaves no rings.

PAR. 4. In truth and in fact the statements hereinabove in paragraph 3 set forth and respondent's representations that said product will remove spots without injury to color or fabric, and that the use of said product leaves no spot or ring are, and each of them is, extravagant, false, misleading, and deceptive. The use of said product on fabrics or materials, dyed with certain kinds of dyes, such as nonfast dyes, does impair, harm, and affect the colors of such fabrics or materials, by causing the same to bleed or run. The use of said product on certain fabrics or materials, and under certain conditions or circumstances, does result in the appearance of a spot or ring on such fabrics or materials, and in either or both of these ways such fabrics or materials are in fact injured by the use of said products thereon.

PAR. 5. Said advertisements and labels have had and still have the tendency and capacity to mislead and deceive; do mislead and deceive, and have mislead and deceived the purchasing public, by causing it to believe that respondent's cleaner removes grease spots and other spots or stains without injury to fabric or color and leaves no spots or rings on fabric or material; and do induce the purchasing public to buy respondent's cleaning fluid, hereinabove described, in such erroneous belief; afford retail merchants an opportunity to perpetrate a fraud on the purchasing public; have the capacity and tendency to divert, have unfairly diverted, and do now unfairly divert trade to respondent from competing individuals, partnerships, and corporations engaged in the sale of like or similar cleaners in interstate commerce, who truthfully and honestly advertise and label their cleaners.

PAR. 6. The acts, practices, and representations of the respondent hereinabove set forth are all to the injury and prejudice of the public and the competitors of the respondent, in interstate 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 October 17, 1935, issued and served its complaint in this proceeding, upon respondent, Radiator Specialty Co., a corporation, 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 neither filed an answer to the complaint nor did it otherwise enter an appearance herein, whereupon testimony and evidence in support of the allegations of the complaint were introduced by Richard L. Kennedy, attorney for the Commission before Charles F. Diggs, an examiner of the Commission, theretofore duly designated by it, 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 the said complaint and the testimony and evidence, and brief in support of the complaint, and the Commission having duly considered the same and being fully advised in the premises, finds that the 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 is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business at 315 East Fifth Street, Charlotte, N. C. Respondent is now and for more than 2 years last past has been engaged in the sale of a cleaning fluid advertised and sold by it as "Perfo", and in the distribution thereof in commerce between and among the various States of the United States and the District of Columbia causes and has caused said product, when sold, to be transported from its place of business in the State of North Carolina, to purchasers thereof, some located in said State, and others located in various other States in the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent is now and has been, for more than 2 years last past, in substantial competition with other corporations and with individuals, partnerships, and firms, engaged in the manufacture, sale, and distribution of cleaning fluids and similar products, in interstate commerce between and among the various States in the United States and the District of Columbia, used for purposes similar to the purposes for which respondent's products are used.

PAR. 3. In the course and conduct of its said business, as hereinabove described, the respondent, in soliciting the sale of and selling, in interstate commerce, a cleaner sold by it under the name of "Perfo", caused, and still causes, its said product to be placed and sold in cans, or containers, with labels affixed to said containers, and with showcase, or display cards, reading:

Perfo cleans thoroughly and is safe to use. It will not burn or explode and cannot injure fabric or color;

Will not harm fabrics, material, or colors;

Will not injure fabrics or color;

Does not injure the most delicate fabrics;

Perfo absorbs the spot;

Leaves no rings.

PAR. 4. In truth and in fact the statements hereinabove in paragraph 3 set forth and respondent's representations that said product will remove spots without injury to color or fabric, and that the use of said product leaves no spot or ring, are, and each of them is, extravagant, false, misleading, and deceptive. The use of said product on fabrics or materials, dyed with certain kinds of dyes, such as nonfast dyes, does impair, harm, and affect the colors of such fabrics or materials, by causing the same to bleed or run. The use of said product on certain fabrics or materials, and under certain conditions

479

Order

or circumstances, does result in the appearance of a spot or ring on such fabrics or materials, and in either or both of these ways such fabrics or materials are in fact injured by the use of said product thereon.

PAR. 5. The said advertisements and labels used as hereinbefore described have had and still have the tendency and capacity to mislead and deceive; do mislead and deceive, and have misled and deceived the purchasing public, by causing it to believe that respondent's cleaner removes grease spots and other spots or stains without injury to fabric or color and leaves no spots or rings on fabric or material; and do induce the purchasing public to buy respondent's cleaning fluid, hereinabove described, in such erroneous belief; afford retail merchants an opportunity to perpetrate a fraud on the purchasing public; have the capacity and tendency to divert, have unfairly diverted, and do now unfairly divert trade to respondent from competing individuals, partnerships, and corporations engaged in the sale of like or similar cleaners in interstate commerce, who truthfully and honestly advertise and label their cleaners.

CONCLUSION

The aforesaid acts and practices of respondent, Radiator Specialty Co., a corporation, are each and all to the prejudice of the public, and to the competitors of 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 proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the testimony and evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the charges of the complaint, and brief filed herein by Richard L. Kennedy, counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has 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 respondent, Radiator Specialty Co., a corporation, its officers, representatives, agents, and employees, in connec-

Order

22 F. T. C.

tion with the advertising, offering for sale, and sale in interstate commerce of its cleaning fluid designated as "Perfo" forthwith cease and desist:

From representing or claiming, through the use of advertisements, circulars, labels, or in any other manner, that respondent's cleaning fluid "Perfo" is not harmful or injurious to any fabric, material, or color; that it will absorb spots or that it does not leave a spot or ring on materials upon which it is used; and from making statements having the same or similar meaning, or which may have the capacity or tendency to lead purchasers into the belief that the colors or fabrics of materials dyed with fugitive or nonfast dyes will not be injured by the use of said product, or that said product will under no circumstances leave a ring or spot on materials on which it is used.

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

Syllabus

IN THE MATTER OF
VICTOR SOAP COMPANY

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

Docket 2368. Complaint, Apr. 17, 1935—Decision, Apr. 13, 1936

Where a corporation engaged under different trade names in sale and distribution of soap through jobbers, retailers, agents, and house-to-house canvassers to purchasing and consuming public; in periodical advertising, and in circulars and pamphlets distributed by it and sent in response to inquiries from prospective salesmen—

- (a) Falsely represented that it guaranteed that persons who undertook to sell its products would meet with a marked degree of success through such statements as "House wives buy on sight", "Here's the kind of fast-selling profit maker you've been looking for. Liberal profits—up to 200%—very attractive—sells on sight", etc.;
 - (b) Falsely represented that its agents were "Cleaning up" opening up soap shops, through quoted testimonials setting forth "'\$100.00 CLEAR PROFIT THE FIRST WEEK.' 'I was working for \$1.00 a day before I took on the Victor Line. The very first week I made \$100.00 clear profit. Today I own my own soap store. I have averaged more than \$80.00 a week profit'", etc., facts being person quoted as having soap store, etc. conceded that favorable results thus portrayed did not continue as conditions became less favorable;
 - (c) Falsely represented that its agents were earning from \$50 a week to \$5,000 a year through such statements as "A CHANCE TO EARN UP TO \$15 A DAY", "AGENTS! DISTRIBUTORS! YOU CAN EARN UP TO \$5,000 A YEAR!", etc., facts being it is rarely, if ever, possible to earn up to \$5,000 a year or make \$15 a day profit, and said soap does not sell without effort or on sight, as represented;
 - (d) Falsely represented that the regular price for such soap or its said soap, as sold by it, was \$1, through such statements as "Seven cakes of finest toilet soaps in handsome packages sells for only 25¢. The kind of soap used in every home every day. Selling price marked on box, \$1.00. You sell for only 25¢", etc., facts being same assortment in retail stores does not cost \$1 nor does its soap sell for such price but in fact for only 25 cents; and
 - (e) Designated as "Germicidal Soap" one of the cakes included among its assortments, facts being the soap thus referred to does not kill germs within the standard claimed applicable to term "germicidal soap";
- With capacity and tendency to confuse, mislead, and deceive a substantial number of the purchasing public into the belief that said statements were true and to mislead and deceive many persons into becoming its agents and offering and selling its products to such public, and with effect of causing same to buy substantial quantities of its said soap in aforesaid erroneous belief, and of diverting thereby substantial trade to it from competitors who do not misrepresent the actual or probable earnings of their agents or prospective agents or the selling price or therapeutic value