

IN THE MATTER OF
ECONOMY RUBBER PRODUCTS COMPANY

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

Docket 2718. Complaint, Feb. 10, 1936.—Decision, Apr. 17, 1936

Where a corporation engaged in the sale of a brand of tire patches known to the trade as "Tiger-Grip"; in matter in advertisements and in circulars and labels directed to soliciting prospective salesmen or distributors to engage in the sale and distribution of its said product and creating demand therefor on the part of the consuming public—

- (a) Set forth that there was "Big money in Tire Patches" and that its salesmen or distributors make up to \$15 a day or earn from \$12 to \$20 daily or \$75 weekly and are guaranteed to make 100 percent profit on all sales of its said products, facts being said representations were grossly exaggerated and misleading, there is no big money to be earned as aforesaid, average wage or commission is no such amount as represented nor does average salesman and distributor earn any such amount, and few if any ever earned any such amount over a period of several days or in any 1 week, and their sales were not in fact 100 percent profit guaranteed;
- (b) Represented that its said patches renew old blown out tires instantly, insure permanent tire repairs and permanently repair blowouts, rim cuts, etc. by self vulcanizing and save motorists 50 percent in mileage and cost compared with results obtained from competing product, and were guaranteed to repair nail holes and save tire, facts being said statements were false in aforesaid various respects and there was no bona fide insurance that any guaranteed mileage would be obtained by persons whose tires were repaired by its said product;

With tendency and capacity to mislead and deceive prospective salesmen or distributors and purchasing public into erroneous belief that said statements were true and to induce members of the public to enlist in its service and purchase its said products in such erroneous belief, and with effect of so inducing, to the consequent damage and injury to prospective salesmen or distributors and that of the general public and with effect of unfairly diverting trade to it from competitors, among whom there are those who do not misrepresent their products and falsely claim for them such merits and results, to the substantial injury and substantial competition:

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. Joseph C. Fehr for the Commission.

Mr. Daniel L. Dwyer, of Dayton, Ohio, 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 Economy Rubber Products Co., hereinafter referred to as 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 stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Economy Rubber Products Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business located in the city of Dayton, in the State of Ohio. It is now and for more than one year last past has been engaged in the business of selling and transporting in commerce between and among various States of the United States and in the District of Columbia, a brand of tire patches, which it designates as "Tiger-Grip Tire Patches." It causes and has caused said products, when sold, to be shipped from its place of business in the State of Ohio, to purchasers thereof located in a State or States other than Ohio. In the course and conduct of its business, respondent has been at all times herein referred to in substantial competition with other corporations, individuals, firms, and partnerships also engaged in the sale and distribution in interstate commerce of similar articles and commodities, and of articles and commodities for the same and similar purposes.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling its said articles and commodities designated as "Tiger-Grip Tire Patches" in interstate commerce, caused the same to be advertised in various periodicals and other advertising literature, having interstate circulation, and by radio broadcasts and otherwise. These advertisements contained various statements among which are the following:

Big money in Tire Patches.

Tiger-Grip Patches guaranteed 10,000 miles.

\$75 weekly for salesmen or distributors.

Protected territory.

Renews old blown out tires instantly.

Saves Motorists 50%.

Easy to build regular route up—steady customers who repeat regularly.

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22 F. T. C.

TIGER-GRIP TIRE PATCHES Insure Permanent Tire Repairs. They insure tire mileage.

TIGER-GRIP TIRE PATCHES Permanently Repair Blow Outs, Rim Cuts, etc., by Self Vulcanizing.

HERE * * * is a chance to make up to \$15 a DAY.

Our men are earning from \$12 to \$20 daily—building a steady repeat business.

Territories are going fast, we urge you to MAIL your application today.

Insures Permanent Tire Repairs.

GUARANTEED Repair the Nail Hole and Save the Tire.

SELF VULCANIZING.

100% profit-guaranteed sales for you.

PAR. 3. The representations made by the respondent as set forth in paragraph 2 hereof, are false, misleading, and deceptive in that there is no "Big money in tire patches." Said tire patches have not been and are not good for "10,000 miles." It is not true that one of respondent's tire patches "saves motorists 50%." The sale and distribution of respondent's tire patches does not bring and did not bring "\$75 weekly for salesmen or distributors." Respondent is not and has not been in a position to provide salesmen or distributors with "Protected territory", and it cannot and could not truthfully represent that "territories are going fast." The sale and distribution of these tire patches does not and did not provide salesmen "a chance to make up to \$15 a day." Respondent's tire patches do not and did not furnish salesmen an opportunity to earn "from \$12 to \$20 daily" and provide for "100% profit-guaranteed sales." Respondent's tire patches are not and have not been "Self-Vulcanizing", and they do not and did not provide a market for "steady customers who repeat regularly." They cannot and could not renew "old blown out tires instantly", and they did not and do not "insure tire mileage" nor do they "permanently repair blow outs, rim cuts, etc."

PAR. 4. There are among the competitors of respondent, and have been for more than one year last past, manufacturers and distributors of tires, tire patches, and other products similar to those manufactured by respondent, who do not misrepresent said products and who do not falsely claim that said products have the merits and the capacity to achieve results such as respondent herein claims for its articles and commodities, as set forth in paragraphs 2 and 3 hereof.

PAR. 5. The use by respondent of the methods, acts, and practices as hereinabove set forth has had and now has the capacity and tendency unfairly to divert trade to respondent from its competitors to their substantial injury and has diverted and does divert trade to respondent from its competitors, and has the tendency and capacity to and does injure the purchasing public by inducing purchasers and

prospective purchasers to purchase respondent's said "Tiger-Grip Tire Patches" in the erroneous belief that the representations made by respondent concerning its products are true.

PAR. 6. The above alleged acts and practices of respondent are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in or affecting commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914, as amended.

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 10th day of February 1936, issued and served its complaint in this proceeding upon the respondent, Economy Rubber Products Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business located in the city of Dayton, in the State of Ohio, 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 and the filing of said respondent's answer thereto the respondent, through its attorney, Daniel L. Dwyer, filed a motion to withdraw said answer and filed a substituted answer, subject to the approval of the Commission, in which substituted answer the respondent admitted all the material allegations of the complaint to be true and in which said substituted answer it was provided that the Commission might proceed upon the statement of facts as set forth in the complaint to make its report, its findings as to the facts (including inferences which it might draw from said facts as agreed upon) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of arguments or the filing of briefs; and the Commission having duly considered 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, Economy Rubber Products Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal place

of business located in the city of Dayton, in the State of Ohio. It is now and for more than one year last past has been engaged in the business of selling and transporting in commerce between and among various States of the United States and in the District of Columbia, a brand of tire patches known to the trade as "Tiger-Grip Tire Patches." It has caused and still causes said products, when sold, to be shipped from its place of business in the State of Ohio, to purchasers thereof located in a State or States other than Ohio. The respondent, during the aforesaid times, was and still is in substantial competition with other corporations, individuals, firms, and partnerships also engaged in the sale and distribution in interstate commerce of similar articles and commodities, and of articles and commodities used for the same and similar purposes.

PAR. 2. In the course and conduct of its business, as aforesaid, the respondent, in soliciting prospective salesmen or distributors to sell and engage in the sale and distribution of its said tire patches, and for the purpose of creating a demand on the part of the consuming public for said products, now causes and for several years last past has caused advertisements, circulars, and labels to be issued, published, and circulated to and among the general public of the United States. In said ways and by said means the respondent makes and has made to the general public many unfair exaggerated and misleading statements with reference to the value and efficiency of its said tire patches and also concerning the daily and weekly earnings of its salesmen or distributors, among which are the following:

Big money in Tire Patches.

\$75 weekly for salesmen or distributors.

Renews old blown out tires instantly.

Saves Motorists 50%.

TIGER-GRIP PATCHES insure Permanent Tire Repairs. They insure tire mileage.

TIGER-GRIP TIRE PATCHES Permanently Repair Blow Outs, Rim Cuts, etc., by Self Vulcanizing.

HERE * * * is a chance to make up to \$15 a DAY.

Our men are earning from \$12 to \$20 daily—building a steady repeat business.

Insures Permanent Tire Repairs.

GUARANTEED Repair the Nail Hole and Save the Tire.

SELF VULCANIZING.

100% profit-guaranteed sales for you.

PAR. 3. The representations made by respondent as set forth in paragraph 2 hereof with respect to the relative value and efficiency of its tire patches and with respect to the wages and commissions that its salesmen and distributors can earn or are earning,

are grossly exaggerated and misleading. There is no big money to be earned by salesmen or distributors in the sale of respondent's tire patches. The average wage or commission received by respondent's salesmen and distributors is not as much as from \$12 to \$20 per day or \$75 per week, and the average salesman and distributor of respondent does not earn or receive said amounts either daily or weekly for any substantial period of time. Few, if any, of respondent's salesmen or distributors ever earn that much in wages, salaries, or commissions over a period of several days or in any one week.

Respondent's tire patches do not insure permanent tire repairs nor do they permanently repair blow outs, rim cuts, etc., by self vulcanizing. Its tire patches do not save motorists 50 percent, either in the mileage obtained from the use of its patches over what would be obtained through the use of competitive products, nor can motorists obtain respondent's products at a saving of 50 percent over what they would pay for comparable tire patches sold and distributed by respondent's competitors.

The sales made by respondent's salesmen and distributors of its tire patches are not in fact 100 percent profit-guaranteed. There is no actual or bona fide insurance that any guaranteed mileage will be obtained by persons whose tires are repaired with respondent's tire patches.

PAR. 4. There are and have been among the competitors of the respondent, manufacturers and distributors of tires, tire patches, and other products similar to those manufactured by respondent, who do not misrepresent their products and who do not falsely claim that said products have the merits and the capacity to achieve results such as the respondent herein claims for its articles and commodities as above described.

PAR. 5. Each and all of the foregoing false and misleading statements and representations of respondent, as set out in paragraphs 2 and 3 hereof, have had and do have the tendency and capacity to mislead and deceive prospective salesmen or distributors and the purchasing public into the erroneous belief that said statements are true, and have induced and do induce members of the public to enlist themselves in the service of respondent and to purchase respondent's said tire patches in the erroneous belief that the representations made by respondent are true, to the consequent damage and injury to prospective salesmen or distributors and to the injury of the general public, and said representations have unfairly diverted trade to respondent from competitors and thereby substantial injury has been done by respondent to substantial competition in interstate commerce.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings of facts are to the prejudice of the public and of competitors of respondent and are unfair methods of competition in commerce in violation 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

The respondent herein having filed its answer to the complaint in this proceeding and having subsequently filed with this Commission a motion that it be permitted to withdraw its said answer and that it be permitted to file in lieu thereof as a substitute answer the draft of a proposed substituted answer annexed to the said motion; and the Commission having duly considered the said motion;

It is hereby ordered, That the said motion be, and the same is hereby granted; that the answer be and the same is hereby withdrawn; and that the said proposed substituted answer be, and the same is filed in lieu of the said answer hereby withdrawn.

The said respondent in and by its said substituted answer, having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its substituted answer that it does not contest the said proceeding and that it admits all of the material allegations of the complaint to be true, and that it consents that the Commission may, without further evidence and without any intervening procedure, make and enter its findings as to the facts and conclusion thereon, and issue and serve upon it an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having duly considered the record and being now fully advised in the premises;

It is ordered, That the respondent, Economy Rubber Products Co., a corporation, its officers, agents, servants, representatives, and employees in the sale or offering for sale by it in interstate commerce and in the District of Columbia of tire patches and similar products do forthwith cease and desist from:

Representing through advertisements in newspapers and magazines and through circulars, catalogs, labels, or any other form of printed matter or by radio broadcasting, or in any other manner:

- (1) That there is big money in tire patches;
- (2) That its tire patches renew old, blown out tires instantly or that such tires are restored to their original quality;

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(3) That its tire patches save motorists 50 percent either in mileage or in cost in comparison with the mileage said motorists obtain from competing tire patches or in the price they pay for said competing tire patches;

(4) That its tire patches insure permanent tire repairs or permanently repair blow-outs, rim cuts, etc., by self vulcanizing;

(5) That its salesmen or distributors make up to \$15 a day or earn from \$12 to \$20 daily or \$75 weekly, or that they make any other fixed sum daily or weekly which is greater than the daily or weekly wage, salary, or commission actually made or received by the average salesman or distributor of respondent;

(6) That its tire patches are guaranteed to repair nail holes and save the tire until and unless respondent actually refunds money paid for such tire patches that do not wear as guaranteed;

(7) That respondent's salesmen or distributors are guaranteed to make 100 percent profit on all sales of respondent's tire patches; and from making any other representations of similar tenor or import.

And it is hereby further ordered, That the said respondent shall within 60 days from the date of the service upon it of this order file with this Commission a report, in writing, setting forth the manner and form in which it has complied with this order.

MICHAEL WHITEHOUSE, TRADING AS INTERNATIONAL TABLEWARE COMPANY

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

Docket 2719. Complaint, Feb. 12, 1936—Decision, Apr. 17, 1936

Where an individual engaged in the offer and sale of promotional sales plans, tableware, and dishes, and in sale and distribution, incident thereto, to small retail merchants chiefly, of certificates, coupons, and so-called trade cards purporting to be redeemable by said individual in tableware and dishes; in soliciting through agents, local merchants, and retailers to purchase said certificates, etc., at \$4.50 a thousand, to be distributed by them as a business stimulant, among their customers according to merchandise sold, for redemption by said individual without charge to customer, for tableware or chinaware—

- (a) Represented that he had adopted such plan to advertise his tableware and dishes and that it was his practice, according to the contracts entered into between him and such merchants and retailers, to redeem such trade cards when returned to him either directly by the merchants' customers, by mailing the same to his office, or when returned to him by the retailer or merchant who received same from his customers, facts being he followed practice of failing and neglecting to redeem such cards, however sent him;
- (b) Represented that in consideration of cooperation and advertising by merchant or retailer he would refund the \$4.50 per 1,000 cards paid, or any part thereof, when cards had been forwarded either by customer or retailer as hereinbefore set forth, and undertook in his said contracts to furnish a dining-ware display set or set of dishes to every dealer who contracted with him, for exhibition by merchant or retailer for their mutual benefit and to become sole property of such contracting merchant or retailer, facts being he made no such refunds and failed to supply such display sets of tableware and dishes to contracting merchants and dealers;
- (c) Offered to merchants and retailers his so-called Sample Unit Plan which he represented as adopted by it to increase his volume of business and under which he offered and sold to merchants or retailers premiums comprised of individual sets of tableware, i. e., knife, fork, and two spoons, to be distributed free among customers according to amount of merchandise sold, and under which, according to contract, dealer undertook to pay 20 cents for each individual set or so-called Gift Boxes, for such free distribution when dealer forwarded a list of names and addresses of customers who had obtained same, and represented that it would furnish a "beautiful 20-piece dining-ware display set" to such dealers as purchased a hundred units or more of such Gift Boxes, to be put on display and to be dealer's sole property, facts being that gift boxes delivered by it contained a spoon only and he followed practice of failing and neglecting to furnish or supply merchants or retailers who had purchased same with sample or display sets of tableware consisting of number of pieces promised as