

Complaint

IN THE MATTER OF
FANNIE CHANOWITZ, TRADING AS ATLAS 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 2668. Complaint, Dec. 23, 1935—Decision, Sept. 21, 1936

Where an individual engaged in sale through canvassing agents or salesmen of incandescent lamps, customarily demonstrated by them to prospective purchasers through comparing illumination thereof with that of lamps then in use by prospect and having same indicated wattage consumption—

- (a) Sold lamps, wattage consumption or measurement of which was greater than that indicated thereon, after allowing for four percent tolerance recognized in industry in legibly and durable marking, in accordance with established and universal custom among manufacturers and dealers, voltage and wattage on each and every incandescent lamp or bulb sold;

With result that prospective purchasers were thereby deceived and misled into believing that said individual's lamps were of same measurement or less, and produced more light, than lamps of competitors then in use by them, and to cause said customers to use such falsely labeled lamps and discard the truthfully labeled competitive products, and of thereby causing injury to competitors by diverting trade from them to said individual and causing purchasers to pay bigger light bills due to consumption by such falsely labeled lamps of more current than should have been consumed by them had their watt measurements been that labeled thereon; and

- (b) Sold her said lamps with such watt measurement stamped thereon in such a way that same was readily and easily rubbed off and became illegible; after ordinary handling, and it became impossible to determine, without test, what actual measurement of lamp was;

With result of destroying evidence which would have enabled said individual's competitors, in their endeavor to sell their products in competition with such falsely marked lamps, to convince customers or prospective customers of falsity of marking thereon:

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

Before *Mr. Edward M. Averill*, trial examiner.

Mr. James I. Rooney for the Commission.

Mr. Herman B. J. Weckstein, of Newark, N. J., 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 Fannie

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Chanowitz, trading as the Atlas Products Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Fannie Chanowitz, is an individual doing business, at all times since on or about June 24, 1927, under the trade name Atlas Products Company and having at all times a place of business in the city of Newark, State of New Jersey.

PAR. 2. During all the times above mentioned the respondent has been and still is engaged in the business of selling incandescent lamps made and sold for general lighting service for operation in connection with electric current supplied by public service corporations. The respondent during said times has sold and caused its incandescent lamps to be sold, among other ways by canvassing agents or salesmen to members of the public, purchasers of incandescent lamps, located in various States of the United States other than the State of New Jersey, or the State of origin of the shipment. The respondent has caused her incandescent lamps when so sold by her to be transported, by mail or otherwise, from New Jersey, or that State of origin of the shipment, to the purchasers referred to above, located in said other States.

PAR. 3. During all the times above mentioned and referred to, other individuals, firms, and corporations, hereinafter referred to as sellers, have been engaged in the sale of incandescent lamps made and sold for general lighting service for operation with electric current supplied by public service corporations, to purchasers, members of the public for use or consumption, located in various States of the United States other than the State of the seller or the State of origin of the shipment.

PAR. 4. The respondent, in the sale of incandescent lamps is and has been in substantial competition in interstate commerce with other individuals, firms, and corporations, referred to as sellers in paragraph 3 hereof, during all times mentioned and referred to in paragraph 1 hereof.

PAR. 5. Substantially at all times above mentioned and referred to, and for many years prior thereto, it has been the custom and practice of public service corporations throughout the United States to supply users of electric current for general lighting service in the respective communities served by them, variously for the particular unit, on either 110, 115, or 120 volt multiple circuits, as the case may be. During said times all the members of the industry engaged in the

sale of electric lamps or bulbs have known of this custom and practice and of the voltage of the electric current supplied by the service corporations in their respective localities.

PAR. 6. There is and has been, during all the times above mentioned and referred to and for many years prior thereto, an established and universal custom in the United States in connection with the manufacture and sale of incandescent lamps manufactured for general lighting service for operation in connection with electric current supplied by public service corporations, that, at the times they are displayed or offered for sale or sold by dealers to users or consumers, including the Federal and State Governments and their agencies, and municipal and other corporations, and members of the public, the lamps shall be legibly, durably marked or branded, among other things, with the words and figures indicating, respectively, the number of volts and watts that is the measure of their electromotive force and power, allowing for certain tolerances, more or less, in that statement of the number of watts with which they are marked or branded. The tolerances in the watt measurement, above referred to, are and have been known to and recognized, substantially by all the members of the industries engaged in the manufacture and sale of incandescent lamps in the United States during all the times above mentioned and referred to. And, the tolerances in the watt measurements of incandescent lamps manufactured for general lighting service, above referred to, have during said times coincided with the tolerances as set forth in the Federal Specifications for the purchase of incandescent lamps by the United States Government.

PAR. 7. The tolerance allowed in the statement of the number of watts with which incandescent lamps are and have been marked or branded during the times mentioned and referred to, has been four percent above or below that marked or branded on the lamp.

PAR. 8. During all the times above mentioned the respondent has caused the incandescent lamps which she sold in the manner hereinbefore stated, to be exhibited by her salesmen or agents to purchasers and prospective purchasers, labelled, marked, or branded with less watt measurements than the actual watt measurement which was much greater than the watt measurement with which they were labelled, marked, or branded after allowing for the tolerance hereinbefore referred to. And the respondent knew, or with ordinary care should have known, her lamps were falsely branded or labelled with respect to their watt measurement.

PAR. 9. That during all the times above mentioned and referred to, and for many years prior thereto, the public has relied upon the accuracy of the wattage and voltage as the same was branded or marked

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upon the lamp by the manufacturer or seller thereof, otherwise purchasers or users thereof would have no practical way of knowing the wattage or voltage of the incandescent lamp purchased.

The amount of electric current consumed in the use of incandescent lamps varies, among other things, according to the watt measurement of the incandescent lamps.

PAR. 10. During the times above mentioned the respondent through her agents and salesmen has caused demonstrations of her incandescent lamps to be made to members of the public. In such demonstrations the lamp of the respondent labelled with the same watt measurement as that of the lamp then in use by a prospective purchaser would be compared to show the greater amount of light given by the respondent's lamp over the one then in use. When in truth and in fact the respondent's lamp was of a much greater watt measurement than the lamp with which it was compared, although branded or labelled the same. Prospective purchasers were thereby deceived and misled into believing that respondent's lamp was of the same watt measurement and produced more light, than lamps of competitors then in use by prospective purchasers.

PAR. 11. During all the times above mentioned respondent sold to the public incandescent lamps on which the markings indicating the watt and volt measurements were easily, purposely or accidentally, by wear and tear obliterated or erased, and the evidence thereby destroyed, which would show to be false the representations respecting the watt and volt measurements of the lamps; contrary to the usual custom in marking or branding the watt and volt measurements of incandescent lamps employed by the members of the industry engaged in making and selling incandescent lamps.

PAR. 12. The misbranding of the lamps or bulbs, and the method used in branding or marking said lamps or bulbs by the respondent, as set forth in paragraphs 8 and 9 heretofore, had the capacity and tendency to deceive and mislead purchasers or prospective purchasers of electric lamps or bulbs; and by reason of such misrepresentations the public was deceived and misled into purchasing the respondent's lamps or bulbs, to its injury and prejudice, in place of electric lamps or bulbs sold by respondent's competitors, and thereby trade in electric lamps or bulbs was diverted to the respondent from her competitors. Thereby substantial injury was done by the respondent to substantial competition in interstate commerce.

PAR. 13. The above acts and things done and caused to be done by the respondent were and are, each and all, to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in interstate commerce within the meaning and intent

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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 December 23, 1935, issued and served its complaint in this proceeding upon respondent Fannie Chanowitz, trading as the Atlas Products Company, charging her 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 failing to file any answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by James I. Rooney, attorney for the Commission, before Edward M. Averill, 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, the testimony and evidence in support of the complaint; no answer having been filed by the respondent who through her counsel, Herman B. J. Weckstein, orally waived her right to file an answer to the complaint, to file briefs in opposition thereto, or to be heard in oral argument before the Commission, all of which appears of record; and the Commission having duly considered the same and being now 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. Fannie Chanowitz is an individual doing business since June 24, 1927, up to the present time under the trade name of Atlas Products Company, with her principal place of business in the city of Newark, State of New Jersey.

PAR. 2. Respondent has been, during all the time above mentioned and still is, engaged in the sale of incandescent lamps made and sold for operation with electric current supplied by public service corporations in general lighting service. Respondent sells her lamps by means of canvassing agents or salesmen who travel throughout the various States of the United States, taking orders for and demonstrating said lamps to the purchasers thereof. The respondent caused

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said lamps when sold by her to be transported from the State of New Jersey to the purchasers thereof located in various States of the United States other than the State of New Jersey.

PAR. 3. There are other individuals, firms, and corporations located in various States of the United States engaged in the sale of incandescent lamps made and sold for the purpose as the incandescent lamps sold by said respondent, and said individuals, firms, and corporations cause the lamps when sold by them to be transported to purchasers thereof located in various States of the United States other than the State of origin of the shipment and are in competition in interstate commerce with said respondent.

PAR. 4. There is, and has been, for a number of years an established and universal custom among manufacturers and dealers of incandescent lamps in the United States, to legibly and durably mark, stamp, or brand the lamps sold by them with the words and figures indicating the voltage and wattage of each and every lamp or bulb. It is also a recognized custom in the industry that a certain variation or tolerance in the watt measurement of any lamp is allowable and that this tolerance is four percent either above or below the rating marked upon said lamp above. The amount of electric current consumed in the use of incandescent lamps varies according to the watt measurement of the lamp, thus the greater the watt measurement of a lamp, the more electricity is consumed in its use; and it is of great importance to the purchaser of incandescent lamps that the said lamp be of the same watt measurement as that marked or labeled thereon and that said marking be legibly and durably placed on said lamp so that the purchaser may know that the lamp is in truth and in fact a lamp of the watt measurement indicated thereon.

PAR. 5. The incandescent lamps sold by respondent in the manner hereinbefore stated were in fact, in nearly every instance, of a greater watt measurement than that indicated upon said lamps after allowing for the tolerance hereinbefore referred to, and the watt measurement stamped upon said lamps is not of a durable nature but was done in such a way that the same was readily and easily rubbed off, so that after ordinary handling of said lamp, it became illegible and it became impossible to determine, without having the same submitted to a test, what the actual watt measurement of said lamps was. It was the custom of the agents of said respondent to demonstrate to prospective purchasers, the lamps of the respondent labeled with the same watt measurement, or less, as that of a lamp then in use by said prospective purchaser, in order to show the greater amount of light given by respondent's lamp over the one then in use, when in truth and in fact, respondent's lamp was of a

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much higher watt measurement than the lamp with which it was compared, although branded and labeled the same, or less. Prospective purchasers were thereby deceived and misled into believing that the respondent's lamp was of the same watt measurement, or less, and produced more light than the lamps of competitors then in use by them, and to cause said customer to use the falsely labeled lamps and discard the truthfully labeled lamps of the competitors, thereby causing not only injury to the competitors, by diverting trade from said competitor to the respondent, but causing the purchaser to pay a greater electric light bill because of the fact that the lamps which were falsely labeled by the respondent consumed a greater amount of electric current than they should have consumed had the lamps been of the watt measurement labeled thereon. The want of durability in the marking of lamps sold by the respondent had the effect of destroying the evidence which would have enabled the competitors of respondent, in their endeavor to sell lamps in competition with respondent's falsely marked lamps, to convince customers or prospective customers of the falsity in the marking upon respondent's lamps.

CONCLUSION

The aforesaid acts and practices of respondent, Fannie Chanowitz, are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, testimony and evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, by James I. Rooney, counsel for the Commission; no answer or brief having been filed by the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent had 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 the respondent, Fannie Chanowitz, trading as the Atlas Products Company, her representatives, agents and employees, in connection with the offering for sale, sale, and distribu-

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tion of incandescent lamps in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Representing that said incandescent lamps are of any other watt measurement than that stamped, marked, or labeled thereon, with due regard to the permissible tolerance.

(2) Labeling, imprinting, marking, or stamping the watt measurement on said lamps in such a manner that the same shall be easily eradicated by ordinary handling of said lamps.

It is further ordered, That the respondent 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 has complied with this order.

Syllabus

IN THE MATTER OF

R. C. JENNER AND WILLIAM DeLAPP, DOING BUSINESS
AS JENNER MANUFACTURING COMPANY AND JENNER
SALES COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2863. Complaint, June 30, 1936—Decision, Sept. 21, 1936*

Where two individuals engaged in business of making or assembling small, cheap electric contrivance for heating small quantities of water or other liquid, and in marketing said "Wonder Electric Water Heater"—

- (a) Advertised "Man with car to deliver and make collections. \$40.00 weekly. No selling. Must have reference and \$100.00 in cash to secure goods * * *" in "Help Wanted" or "Man Wanted" section of newspapers, and as below set forth represented in advertisements or to applicants that said two individuals had or would establish, through missionary agents or salesmen, large list of dealers in a city or vicinity, to handle said heaters on consignment, and that all that would be required of applicants would be to distribute products to replace those sold, and to make weekly collections and remittances therefor, facts being no dealers had been established nor was establishment of such a list contemplated and duties required of applicants included selling, and whole business as conducted by said individuals was fraudulent scheme to extract money through falsely representing to persons needing employment, nature of business and character and value of product and what was to be done by those answering and by themselves, and purpose of initial payment or deposit of applicant and terms of employment and salary to be paid;
 - (b) Represented that "initial deposit" required of each applicant was in lieu of temporary fidelity bond, and would be refunded in short time, facts being such "deposit" money, in most instances credited as payment for heaters shipped forthwith to depositor at price profitable to them, though in some instances retained outright, without explanation or consideration, was neither bond nor refunded;
 - (c) Falsely represented that each applicant would receive \$5 for each new dealer secured and that they would furnish servicing distributor with automobile or compensate for use of his own, facts being no such distributor was ever thus supplied or compensated; and
 - (d) Misrepresented demand on part of public for said heaters through sending employee in guise of customer to dealers or prospective dealers to make inquiry about product and purchase small number thereof and return shortly thereafter and order much larger number, thereafter left on hands of dealer and never called for;
- With result that large numbers of individuals in need of employment and relying upon truth of said representations were induced to buy quantities of said product in frequently unrealized hope of profitably reselling same to consuming public, and trade was unfairly diverted thereby to them