

Complaint

23 F. T. C.

IN THE MATTER OF

HELMCO, INC.

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

Docket 2928. Complaint, Sept. 22, 1936—Decision, Oct. 19, 1936

Where a corporation engaged for a number of years past in the manufacture and sale of electric "fudge warmers" and "hot cups" for the heating of liquid mixtures of chocolate and other ingredients used in making candy and soda fountain drinks, and in the advertisement and sale thereof under the trade name "Lacy Hot Cups," and said cups had become widely and favorably known to the drug trade under such name, and members of said trade had, through long usage and over a long period of time, identified such products bearing the name "Lacy" as being those of the well and favorably known "Lacy Products Corporation," advertised, as hereinabove set forth, both by it and by its predecessor under said name; and thereafter a second manufacturer engaged in the sale of such products similar to those made and sold by the aforesaid corporation, and the corporate name of which included the word "Lacy,"—

Made use of its said corporate and trade name, including said word, in advertisements issued, published, and circulated by it to the general public through various periodicals and publications and in other forms of printed matter, and included its said corporate and trade name and the word "Lacy" thereby on its products, as well as in all of its said advertising literature, in sale of its said products in competition with many other distributors of like and similar articles or products who truthfully advertise and represent the origin and manufacture thereof, and do not simulate those of their competitors, or advertise and represent the same in such a way as to deceive and mislead purchasers into the erroneous and mistaken belief that their said products are those of their competitors;

With capacity and tendency to mislead purchasers and prospective purchasers of said products into the erroneous and mistaken belief that the products made and sold by said manufacturer were those of the aforesaid corporation first named herein, notwithstanding fact said competitor manufacturer was not in any way affiliated therewith, and with the result that a substantial number of the purchasing public, on account of the erroneous and mistaken beliefs thus induced, bought the said products of such manufacturer, and trade was unfairly diverted to it from said corporation, and from other competitors who do not engage in similar practices; to the substantial injury of competition in commerce:

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

Mr. J. T. Welch for the Commission.

Mr. Paul G. Ceaser, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914 entitled "An Act to create a Federal Trade Com-

mission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Helmco, Inc., formerly the H. E. Lacy Manufacturing Company, a corporation, 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, Helmco, Inc., formerly the H. E. Lacy Manufacturing Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, having its principal office and place of business located at 844 West Jackson Boulevard, in the city of Chicago, in the State of Illinois. Respondent for more than one year last past has been and still is engaged in the manufacture of electric "fudge warmers" and "hot cups" for the heating of liquid mixtures of chocolate syrup and other ingredients for use in manufacturing candy and soda fountain drinks, and in offering said products for sale, and selling the same, in commerce between the State of Illinois and the several States of the United States other than the State of Illinois and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade and commerce in said products so manufactured by respondent, between and among the various States of the United States and in the District of Columbia. Respondent is now, and for more than one year last past has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture of like and similar products and in the sale thereof between and among the various States of the United States and in the District of Columbia.

PAR. 2. Among the competitors of the respondent is Lacy Products Corporation, a corporation, having its principal office and place of business located at 15 Aberdeen Street, in the city of Chicago, in the State of Illinois. For more than five years last past it has been engaged in the manufacture of electric "fudge warmers" and "hot cups" for the heating of liquid mixtures of chocolate and other ingredients for use in manufacturing candy and soda fountain drinks. It causes and has caused its said products, when sold, to be shipped from its place of business in the State of Illinois to purchasers thereof located in a State or States of the United States other than the State of Illinois. In the course and conduct of its business, Lacy Products Corporation is and has been in competition with other

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corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution, in interstate commerce, of similar products. Said Lacy Products Corporation, as well as its predecessor, Lacy Manufacturing Company, advertised and sold, and still advertises and sells, its said products under the trade name of "Lacy Hot Cups" under which name or designation said cups have become widely and favorably known to the drug trade. Said members of the drug trade have, through long usage and over a long period of time, identified electric "fudge warmers" and "hot cups" for heating of chocolate and other ingredients in making soda fountain drinks, which bear the name "Lacy" as being products of the well and favorably known Lacy Products Corporation.

PAR. 3. In the course and conduct of its business, as described in paragraph 1 hereof, the respondent, in soliciting the sale of and selling its electric "fudge warmers" and "hot cups", which are similar to those manufactured and sold by Lacy Products Corporation, and for the purpose of creating a demand upon the part of the consuming public for its products, has caused advertisements to be issued, published, and circulated to and among the general public of the United States in various periodicals and publications and in other forms of printed matter in which it has used and featured its adopted corporate and trade name, namely "H. E. Lacy Manufacturing Company", thus including the word "Lacy".

PAR. 4. The statements and representations of the respondent set forth in paragraph 3 hereof, in connection with the manufacture and sale of its "fudge warmers" and "hot cups", have the capacity and tendency to mislead purchasers and prospective purchasers of respondent's products into the erroneous and mistaken beliefs that its said products were and are the products of the Lacy Products Corporation mentioned in paragraph 2 hereof. In truth and in fact, the respondent is a competitor of the Lacy Products Corporation, and not in any way affiliated with said Lacy Products Corporation.

PAR. 5. There are among the competitors of the respondent in interstate commerce manufacturers, distributors, and sellers of like and similar products who truthfully advertise and represent the origin and manufacture of their respective products, and do not simulate the products of their competitors, and who do not advertise and represent their products in such a way as to deceive and mislead purchasers and prospective purchasers into the erroneous and mistaken beliefs that said products are other than their own.

PAR. 6. The above alleged acts and practices of respondent have the capacity and tendency to mislead and deceive purchasers and

prospective purchasers into the erroneous beliefs described here and into the purchase of respondent's products in such beliefs. Thereby trade is unfairly diverted to respondent from the Lacy Products Corporation, aforesaid, and from other competitors of the respondent in interstate commerce referred to in paragraph 5 and as a consequence thereof, substantial injury is done by respondent to competition in interstate commerce.

PAR. 7. Said acts and practices of respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in 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.

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 September 22, 1936, issued and served its complaint in this proceeding upon respondent, Helmco, Inc., formerly the H. E. Lacy Manufacturing Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On October 1, 1936, the respondent filed its answer in which answer it admitted all the material allegations of the complaint to be true and stated that it waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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. Respondent, Helmco, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois. Its office and principal place of business is located at 844 West Jackson Boulevard, in the city of Chicago, State

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of Illinois. Said respondent was formerly incorporated under the name H. E. Lacy Manufacturing Company. For more than one year last past, it has been, and still is, engaged in the manufacture of electric "fudge warmers" and "hot cups" for the heating of liquid mixtures of chocolate syrup and other ingredients for use in making candy and soda fountain drinks, and in the sale and distribution of said products in commerce between the State of Illinois and the various States of the United States other than the State of Illinois. Respondent has at all times mentioned herein maintained a constant current of trade in said products so manufactured and sold by it, in commerce among and between the various States of the United States. Respondent has also been in substantial competition with other corporations and with individuals, and partnerships engaged in the manufacture of like and similar products and in the sale thereof, in commerce among and between the various States of the United States.

PAR. 2. Among the competitors of the respondent is Lacy Products Corporation, a corporation having its principal office and place of business located at 15 Aberdeen Street, in the city of Chicago, State of Illinois. For more than five years last past, it has been engaged in the manufacture of electric "fudge warmers" and "hot cups" for the heating of liquid mixtures of chocolate and other ingredients used in making candy and soda fountain drinks. It causes its products, when sold, to be shipped from its place of business in the State of Illinois to the purchasers thereof located at points in States of the United States other than the State of Illinois. In the course and conduct of its business, it has been in competition with other corporations and with individuals and partnerships likewise engaged in the sale and distribution of similar products, in commerce among and between the various States of the United States. Said Lacy Products Corporation, as well as its predecessor, Lacy Manufacturing Company, advertised and sold, and now advertises and sells, its said products under the trade name of "Lacy Hot Cups." Said cups have become widely and favorably known to the drug trade under this name. Members of the drug trade have, through long usage and over a long period of time, identified electric "fudge warmers" and "hot cups" for heating chocolate and other ingredients in making soda fountain drinks, which bear the name "Lacy" as being products of the well and favorably known Lacy Products Corporation.

PAR. 3. The respondent, Helmco, Inc., in soliciting the sale of and in selling its electric "fudge warmers" and "hot cups" which are similar to those manufactured and sold by Lacy Products Corpora-

tion and for the purpose of creating a demand upon the part of the consuming public for its products, has caused advertisements to be issued, published and circulated to the general public through various periodicals and publications and in other forms of printed matter. In all of said advertising literature, as well as on the various products themselves, respondent has used its corporate and trade name "H. E. Lacy Manufacturing Company", which includes the word "Lacy."

PAR. 4. The acts and practices of the respondent herein detailed, in connection with the manufacture and sale of its "fudge warmer" and "hot cups", in designating and marking said products with the name "Lacy", have the capacity and tendency to mislead purchasers and prospective purchasers of such products into the erroneous and mistaken beliefs that the products manufactured and sold by the respondent were and are products of the Lacey Products Corporation. In truth and in fact, the respondent is a competitor of the Lacy Products Corporation and is not, in any way, affiliated with said Lacy Products Corporation.

PAR. 5. There are among the competitors of the respondent many distributors of like and similar products who truthfully advertise and represent the origin and manufacture of their respective products and who do not simulate the products of their competitors or advertise and represent their products in such a way as to deceive and mislead purchasers into the erroneous and mistaken belief that said products are those of their competitors when they are actually their own products.

As a result of the erroneous and mistaken beliefs, induced as aforesaid, a substantial number of the purchasing public have bought respondent's products. As a result thereof, trade is unfairly diverted to the respondent from the Lacy Products Corporation and from other competitors of the respondent who do not engage in similar practices. As a consequence thereof, substantial injury is done by respondent to competition, in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, Helmco, Inc., 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."

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and 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 the respondent, Helmco, Inc., formerly H. E. Lacy Manufacturing Company, its officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of electric "fudge warmers" and "hot cups" in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or by implication, through the use of the word "Lacy" to describe its said products or as part of its trade or corporate name, or through any other means, that its products are those made and distributed by Lacy Products Corporation, or that it is connected or affiliated with Lacy Products Corporation,

2. Imprinting or lettering, or by any means, instrumentality or device placing on its products the word "Lacy".

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

G. FRED STAYTON AND THE BETTY WHITE CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2856. Complaint, June 29, 1936—Decision, Oct. 20, 1936

Where a corporation and an individual, president thereof and theretofore similarly occupied as president of two similarly engaged preceding corporations prior to their respective dissolution, engaged in distribution and sale of a line of toilet preparations, cosmetics, and beauty preparations, consisting of some twenty-nine different items and sold under the name of "Betty White" products, and likewise engaged, in connection with the conduct of such business, in conducting and advertising prize contests in various papers and magazines of general circulation throughout the several States, directed to promoting the sale of such preparations—

- (a) Represented, in their so-called contact advertising describing said contests, in the form, generally, of full-page advertisements on the back cover page or inside back cover page of papers and magazines of general circulation, in many cases, among the several States, that a person solving a problem or puzzle there presented and sending in solution, would, without being required to make any other substantial effort, be given a prize or award, and that the mere mailing of a correct solution would be sufficient to win a prize, and that a contestant in such puzzle or problem contest was not required to pay any money, and falsely purported in their advertising to disclose all of the terms and conditions that must be met by the contestant, and actually set out therein a portion only of such terms and conditions, without stating such fact, through such statements, among numerous others, as "Send answer quick, and we will tell you how the winner gets \$1250 cash for promptness," "Send no money—just mail coupon," "Remember, *send not one penny* with your answer. All you do now is to find ten *faces* if you can and mail the coupon. Send answer right away. Three prominent and reliable judges will see that the prizes are awarded honestly and promptly. * * * Over 100 grand prizes in all and many special prizes. PRIZE MONEY NOW IN BANK. * * * Just mark the faces you find and send with the coupon right away. Don't you want the opportunity to win \$2,250.00 First Grand Prize? * * * *Don't delay. Do it today!*";

The facts being that such contact advertisements did not disclose the requirement of purchases from, and sales of, their preparations as a necessity for the prize-winning, notwithstanding fact such purchases and sales constituted primary purpose and requisite of the contest, and first information of such requirement was disclosed in the rules enclosed with answers sent to all those replying to such contact advertisement, before any money was sent to the company by any one, on the letterhead of said corporation