

Complaint

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IN THE MATTER OF
AFTA SOLVENTS CORPORATION

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

Docket 2594. Complaint, Oct. 23, 1935—Decision, Nov. 20, 1936

Where a corporation engaged in the manufacture and sale of a liquid cleaning fluid under the designation "Afta" or "Afta Spot Remover," for use in cleaning fabrics, automobile upholstery, rugs, etc.—

Represented, on labels and orally, as the case might be, that said preparation was a spot remover and would remove foreign matter and leave no spot or ring, and would not injure the color or the material of the fabric; facts being that, applied to cottons dyed with either of three dyes in commercial use, it caused some of the color to be dissolved and to run, and, applied to silk, caused a spot or ring to appear where thus applied;

With effect of deceiving and misleading purchasers, wholesale and retail dealers, and members of the public who use such fluids for aforesaid purposes, into believing that such representations were true, and into purchasing its said cleaning fluid instead of the preparations of competitors, in reliance upon said belief, and of thereby diverting unfairly to it trade in such fluids from its competitors; 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.

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

Mr. Edward E. Reardon for the Commission.

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 Afta Solvents 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 stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Afta Solvents Corporation, is a corporation organized under the name Afta Chemical Corporation, on or about April 22, 1930, under the laws of the State of New York. On February 11, 1932, the name of the respondent was changed from Afta Chemical Corporation to Afta Solvents Corporation, and at all

times since its organization the respondent had and now has a place of business in the city of New York, and it is and has been during all the times since the date of its organization, engaged in the business of the manufacture and sale of a liquid cleaning fluid under the trade or brand name "Afta" or "Afta Spot Remover," for use in the cleaning, among other things, of fabrics, auto upholstery, both fabric and leather, rugs, carpets, draperies, gloves, hats, and furs.

PAR. 2. During all the times above mentioned the respondent has caused its cleaning fluid to be sold both to members of the public for use and to wholesale and retail dealers therein for resale to the public, purchasers thereof, located in the various States of the United States other than New York or the State of origin of the shipment.

The respondent has caused its cleaning fluid, when so sold by it, to be transported from New York, or from the State of origin of the shipment, to, into, and through States other than New York, or the State of origin of the shipment, to the purchasers located in said other States.

PAR. 3. During all the times above mentioned, other individuals, firms, and corporations, hereinafter referred to as sellers, located in the various States of the United States, have been engaged in the business of the manufacture and of the sale of various liquid cleaning fluids for the same purposes of use, as set forth in paragraph 1 hereof, and they have, respectively, sold the same both to members of the public for use and to wholesale and retail dealers therein for resale to the public, purchasers thereof, located in the various States of the United States other than the State of the seller, or the State of origin of the shipment.

The sellers, respectively, have caused their cleaning fluids, when so sold by them, to be transported to, into, and through States other than the State of the seller, or the State of origin of the shipment, to the purchasers located in said other States.

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

PAR. 5. During all the times above mentioned the respondent has sold or caused its product called "Afta" or "Afta Spot Remover" to be sold and transported, as set forth in paragraph 2 hereof, in containers on which the respondent caused labels to be placed, containing statements and representations to the effect, among other things, that by the use of the product, foreign matter referred to as "spots" will

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be removed from fabrics or other articles and that after its use to remove such spots no "ring" is visible or appears in the place from which the foreign matter was removed; and also to the effect that the use of the product in cleaning fabrics or other articles does not injure the material of which they are made or their color.

During all said times the respondent has also caused similar statements and representations of its said cleaning fluid to be made verbally, through its officers, agents, and salesmen, and to be published in newspapers and periodicals which circulated among the public of the various States, and in circulars which it caused to be distributed among the dealers and members of the public, sellers and users of liquid cleaning materials.

PAR. 6. When used for the purpose mentioned in paragraph 1 hereof on certain fabrics, the respondent's said cleaning fluid injures the fabric and its color, and the statements and representations, mentioned and referred to in paragraph 5 hereof, made and caused by respondent to be made on the labels of its product, to the effect that, by the use of its product, "Afta" or "Afta Spot Remover," foreign matter referred to as "spots" will be removed from fabric or other articles; and, after its use to remove such spots, no "ring" is visible or appears in the place from which the foreign matter was so removed; and, that its use in cleaning fabrics or other articles does not injure the material of which they are made or their color, are and they were each and all false representations of material facts concerning its said product and the effects of its use made by respondent, its officers, agents, and salesmen, to dealers and members of the public, users of liquid cleaning fluids, and the statements and representations referred to had the capacity and tendency to deceive and mislead dealers and members of the public into believing that they were true and in reliance on such belief into purchasing respondent's cleaning fluid instead of competitors' cleaning fluids and dealers and members of the public were deceived and misled thereby into believing that they were true and into purchasing respondent's product instead of the cleaning fluids of its competitors, and trade was thereby diverted to respondent from its competitors.

PAR. 7. 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 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" (38 Stat. 717), the Federal Trade Commission, on October 23, 1935, issued its complaint in this proceeding and caused it to be served upon the respondent Afta Solvents Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance and service of the complaint and the filing of the respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Edward E. Reardon, Esq., attorney for the Commission, before Charles F. Diggs, Esq., an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Harold Sigmund, president of the respondent, acting on its behalf; and the testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and oral argument of counsel for the Commission and said Harold Sigmund; 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, Afta Solvents Corporation, is a corporation, organized on or about April 22, 1930, under the laws of the State of New York, and at all times since its organization as a corporation, the respondent had, and now has, a place of business in the city of New York, where it is and has been engaged in the business of the manufacture and sale of a liquid cleaning fluid sold by it under the trade or brand name "Afta" or "Afta Spot Remover," for use in the cleaning of fabrics, including automobile upholstery of fabric or leather, rugs, carpets, draperies, garments, gloves, hats, and furs.

PAR. 2. During all the times above mentioned, the respondent has caused its cleaning fluid to be sold to members of the public for use, and to wholesale and retail dealers for resale to the public, purchasers thereof, located in the various States of the United States other than New York or the State of origin of the shipment, and

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the respondent has caused its cleaning fluid, when so sold by it, to be transported from New York, or from the State of origin of the shipment, to, into and through States other than New York, or the State of origin of the shipment, to the purchasers located in the said other States.

PAR. 3. During all the times above mentioned, other individuals, firms, and corporations, hereinafter referred to as sellers, located in the various States of the United States, have been engaged in the business of the manufacture and of the sale of various liquid cleaning fluids for the same purposes of use as the respondent's cleaning fluid, and the sellers, respectively, have sold their cleaning fluids to members of the public for use and to wholesale and retail dealers therein for resale to the public, purchasers thereof, located in the various States of the United States other than the State of the seller, or the State of origin of the shipment.

The sellers, respectively, have caused their cleaning fluids, when so sold by them to be transported to, into and through States other than the State of the sellers, or the State of origin of the shipment, to the purchasers located in said other States.

PAR. 4. The respondent during all the times above mentioned is, and has been, in substantial competition in interstate commerce in the sale of its cleaning fluid, above mentioned, with the other individuals, firms, and corporations, referred to above as sellers.

PAR. 5. During all the time above mentioned, the respondent, has caused its product, "Afta" or "Afta Spot Remover," to be sold and transported, as above set forth, in containers having labels thereon, which contained statements and representations to the effect, among other things, that by the use of the cleaning fluid, foreign matter referred to as "spot" will be removed from fabrics or other articles and that after its use for that purpose, no "spot" or "ring" will appear or be visible in the place from which the foreign matter referred to was removed; and also to the effect that the use of the cleaning fluid in cleaning fabrics or other articles does not injure the material of which they are made or their color.

During all the times since the year 1933, the respondent has also caused verbal statements that its cleaning fluid "Afta" would remove foreign matter from fabrics without injury to their color or to the material of the fabric to be made to the purchasers of the cleaning fluid.

PAR. 6. Respondent's cleaning fluid, "Afta" or "Afta Spot Remover" is a mixture that was composed prior to October 20, 1934, principally of zylene and carbontetrachloride and, when on occasion it was ap-

Conclusion

plied, as it was then composed, to cotton dyed with either of three dyes commercially used in the dyeing of fabrics, and known respectively as naphthol AS, fast blue salt B, and Victoria blue BX, or rhodamine B, it has caused some of the color or dye of the cloth in each case to be dissolved and to "run." The application of respondent's cleaning fluid to silk cloth also has caused a "spot" or "ring" to appear on the cloth at the place where the respondent's cleaning fluid was applied.

PAR. 7. The representations, caused by the respondent to appear on the labels on the containers of its "Afta" cleaning fluid, to the effect that the cleaning fluid is a "spot remover" implies to the public, purchasers of the cleaning fluid, that, when used for the purpose of removing a "spot" caused by foreign matter on fabric or the other articles above mentioned, the foreign matter will be removed and no "spot" or "ring" will thereupon appear or be visible on the said fabric or other articles at the place from which the foreign matter was removed by the application of the cleaning fluid. The representations, made or caused by the respondent to be verbally made at all times since 1933, to purchasers in the sale of its "Afta" cleaning fluid, that the cleaning fluid would remove foreign matter from fabrics and other articles without injury to their color are, and have been, false representations. All of the aforesaid representations had, and still have, the capacity and tendency to, and do, deceive and mislead purchasers, wholesale and retail dealers and members of the public, who use cleaning fluids to remove foreign matter from fabrics, or other articles, into believing that the said representations are true and into purchasing respondent's "Afta" cleaning fluid instead of the cleaning fluids of respondent's competitors in reliance upon said belief. As a result, trade in cleaning fluids was caused thereby to be unfairly diverted to the respondent from its competitors to the substantial injury of competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, Afta Solvents Corporation, 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 power 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, the answer of respondent, testimony and other evidence taken before Charles F. Diggs, Esq., an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Edward E. Reardon, Esq., counsel for the Commission, and by Harold Sigmund, president of the respondent, acting on its behalf, and the Commission having made its findings as to the facts and its conclusion that the 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, Afta Solvents Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale and the sale and distribution of its cleaning fluid, "Afta" or "Afta Spot Remover," or any cleaning fluid of the same or substantially of the same composition, and so sold by respondent, whether sold under the name or brand "Afta" or "Afta Spot Remover," or under any other name or brand, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, or causing others to represent directly or indirectly, that said cleaning fluid will remove spots from fabrics or other articles to which it is applied for the removal of foreign matter and will leave no spot or ring visible in the place from which foreign matter has been removed by the application of the cleaning fluid, or that it will not injure the color of fabrics to which it is applied to remove foreign matter; unless and until such cleaning fluid is so made and composed that the application of it to fabrics and other articles will, in fact, remove foreign matter therefrom without causing spots or rings to appear or to be visible at the place to which it is applied, and will not cause any of the color of the fabrics, or other articles to which it is applied to be dissolved and to "run."

It is further ordered, That the said respondent, Afta Solvents Corporation, shall, within 30 days after the date of 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 and is now complying with the order to cease and desist hereinbefore set forth.

Syllabus

IN THE MATTER OF
CLOPAY CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2630. Complaint, Nov. 15, 1935—Decision, Nov. 20, 1936*

Where a corporation engaged in the manufacture of a certain oiled cellulose pulp-backed, or paper-backed, product designated by it, usually, as "Fabray," and consisting of two types, namely, sheets of (1) cellulosic material coated on both sides with an oil coating and used for window shades, and of (2) cellulosic material coated on one side only with an oil coating and decorated with a glossy finish and used for shelf covering, wall covering and the like, and in the distribution and sale of its aforesaid product in competition with those engaged in the manufacture of an oiled cellulose pulp-backed or paper-backed product or of an oiled cloth-backed product, commonly designated as oilcloth, or of cloth window shades, and in the distribution and sale thereof among the various States and in the District of Columbia—

- (a) Represented, on labels on the containers of its said "Fabray" or in advertisements in newspapers and periodicals of general circulation and in advertising literature, that its said product, "used like oilcloth," was "usually described as the 'Fibre-backed oilcloth'," though its coated surface adheres more firmly "to the solid fibre back than to the 'cheesecloth' backing of ordinary oilcloth," with "superior resistance to chipping and flaking," and also referred, without qualification, to said "Fabray" as oilcloth, and as made from a new kind of material which looks, etc., just like oilcloth, but with "advantages oilcloth cannot have," and represented that in numerous exacting laboratory tests it "revealed wearing qualities as great or greater than ordinary oilcloth," the facts being it was not usually described as above represented and claimed and was not an oilcloth product within the accepted meaning of the term as understood by the purchasing public and the trade generally, and, notwithstanding fact it possessed wearing qualities in certain respects as great or greater than oilcloth of the cheaper and less expensive grades, did not possess such qualities in all respects as great or greater than those of the better and more expensive grades of said products last referred to;
- (b) Represented that its said "Fabray" was "Wash Proof," "Fray Proof," and "Crack Proof," and that its "Fabray" window shades were "Non-Cracking," "Non-Fading," and "Non-Fraying," the facts being that, while said product was washable, did not fray in the usual meaning of the word, or crack under conditions of ordinary usage, and said shades, under such conditions, were non-cracking and non-fraying, product nevertheless was not wash-proof, fray-proof, or crack-proof, nor were shades uniformly non-fading; and
- (c) Adopted and followed a course of action designed to compare its products unfairly with oilcloth products and cloth window shades, generally, and unfairly represented, both directly and by inference and implication, that all grades of oilcloth were subject to weaknesses true only of restricted grades of the cheaper product, and failed to specify, in making comparisons