

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

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of its products with oilcloth and cloth window shades, respective grades thereof to which its own was being compared, or respective grades or qualities of aforesaid products that had been tested by it in comparative tests with its own, through statements, representations and comparisons in its various advertising literature which had the capacity and tendency to create in the minds of a substantial portion of the purchasing public the false and erroneous beliefs that all grades of oilcloth, when creased, would reveal a decided crack, so that bits of the surface coating could be peeled away from the backing, which consisted, in the case of all, of coarsely woven cheesecloth or woven scrim, and that the surface of all grades, upon being scraped, would separate from the backing so that large pieces could be flaked off, etc., and that the backing of all grades was flimsy, and that all would crack or peel, and laboratory tests revealed that oilcloth generally did not have as great wearing qualities as "Fabray," and that all cloth window shades were clay filled and would readily crack or pin-hole upon being creased;

Facts being that, while said "Fabray," upon being laboratory tested, compares favorably in many respects with oilcloth products of the cheaper grades commonly backed as aforesaid, and its "Fabray" window shades, thus tested, compare favorably in many respects with the cheaper grade cloth shades and particularly with those clay filled, better grades of oilcloth products will not crack or peel as aforesaid, nor are all grades made with such backings or with surfacing material which will readily flake off, etc., better grades thereof reveal wearing qualities superior to those of said "Fabray," and all grades of cloth window shades are not clay filled so as to readily crack or pin-hole upon being creased;

With result of placing in the hands of retail dealers and distributors an instrument and a means whereby they might commit a fraud upon a substantial portion of the consuming public by enabling them to represent, offer and sell said "Fabray" as and for oilcloth, and with capacity and tendency to divert unfairly a substantial volume of trade from competitors who manufacture and sell oiled cloth-backed products or oilcloth as generally designated, or who manufacture and sell cloth window shades and do not in any manner misrepresent the character and quality of their products or unfairly disparage products made by corporation in question or other competitors, and with the result that substantial quantities of said "Fabray" were sold to such dealers and to the consuming public; to the injury of substantial 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. John J. Keenan*, trial examiner.

Mr. J. T. Welch for the Commission.

Wood & Wood, of Cincinnati, 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 Clopay

Corporation, a corporation, is now, and has been, 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 the charges in that respect as follows:

PARAGRAPH 1. Respondent, Clopay Corporation, is now, and has been at all times, a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business in the city of Cincinnati, in the State of Ohio, and is now, and has been for a period of more than one year, engaged in the business of manufacturing and selling to distributors and retailers for resale oiled cellulose pulp backed, or paper backed, products designated by the respondent as "Fabray," said "Fabray" products consisting of shelving, window shades, and table covers, as well as "Fabray" in rolls.

PAR. 2. The respondent, being engaged in business as hereinabove set out, causes said product known as "Fabray," when sold to distributors and retail dealers located in various cities in the several States of the United States, to be transported from its principal place of business in the State of Ohio to the purchasers thereof located in other States of the United States and in the District of Columbia, and there is now, and has been at all times mentioned herein, a constant current of trade and commerce in said product known as "Fabray," manufactured and sold by the respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 3. Said respondent, in the course and conduct of its business, is now, and has been at all times mentioned herein, engaged in substantial competition with other individuals, partnerships, and corporations engaged in commerce among the several States of the United States and in the District of Columbia, in the manufacture, distribution, and sale of similar oiled cellulose pulp backed or paper backed products, or of oiled cloth backed products commonly designated as oilcloth; or in the manufacture, distribution, and sale of cloth window shades.

PAR. 4. Respondent, Clopay Corporation, in the course and conduct of its business as detailed in paragraphs 1 to 3 hereof, has offered for sale, and sold, in commerce as hereinabove set out, certain of its products, to wit, "Fabray" in its various forms, such as table covers, window shades, shelving and in rolls, in packages or containers, on the outside of said packages or containers, by way of

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advertisement and inducement to purchase, there being attached a label on which is printed, together with other words, the following:

Fabray used like oilcloth. Fabray is usually described as "The Fibre-backed oilcloth." But its coated surface adheres more firmly to the solid fibre back than to the "cheesecloth" backing of ordinary oilcloth. Hence a superior resistance to chipping and flaking.

The respondent, in advertisements inserted in newspapers and magazines of general circulation throughout the several States of the United States, and in all of its other advertising literature and displays, makes use of the statements hereinabove detailed as appearing on its said labels, or statements of similar import and effect. In certain of its advertisements respondent refers to and designates its product, without qualification, as "Fabray—Fibre-backed Oilcloth," and in certain other of its advertisements and on its display racks represents that its product "looks and wears like oilcloth and has an oilcloth surface." In other advertisements respondent has represented that "Fabray has the same surface as the most expensive fabric backed wall covering" and that its product is manufactured from "a new kind of material just like oilcloth with advantages oilcloth cannot have."

Respondent has also represented in a number of advertisements that "in numerous exacting laboratory tests, Fabray revealed wearing qualities as great or greater than ordinary oilcloth" and that the product is "Wash Proof," "Fray Proof," and "Crack Proof."

Respondent manufactures and sells, in commerce as hereinabove detailed, window shades made from the product designated by it as "Fabray," the material used in manufacturing said window shades being the same as the other "Fabray" material except that both surfaces, instead of only one, are oiled. In advertising its "Fabray" window shades and in displaying said window shades for sale to the public, respondent represents that they are "Non Cracking," "Non Fading," and "Non Fraying."

PAR. 5. In truth and in fact, the product manufactured and sold by the respondent and designated as "Fabray" is not usually described as "The Fibre-backed Oilcloth" and is not an oilcloth product within the accepted meaning of the term "oilcloth" as understood by the purchasing public and the trade generally so as to warrant the respondent's description of it as "Fabray—Fibre-backed Oilcloth." "Fabray" does not wear like oilcloth and does not have the same surface as the most expensive fabric backed wall covering, nor does "Fabray" have advantages or qualities not possessed by oilcloth. Numerous exacting laboratory tests do not reveal that "Fabray" possesses wearing qualities as great or greater than oilcloth, but reveal

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that "Fabray" does not possess wearing qualities as great as oilcloth of the better and more expensive grades. It is not "Wash Proof," "Fray Proof," and "Crack Proof." The window shades manufactured and sold by the respondent from the product designated as "Fabray" are not "Non Cracking," "Non Fading," and "Non Fraying." In truth and in fact, said window shades will crack, will fade and, while not fraying, because they have no cloth backing, are readily subject to tearing.

PAR. 6. Respondent, in the course and operation of its business, and for the purpose of inducing the purchase of its products, has adopted and followed, and now follows, a course of action designed to, and having the effect of, unfairly comparing its product to oilcloth products generally, and to cloth window shades generally, and of unfairly disparaging said products generally.

In certain of its advertising literature distributed to prospective retail dealers and distributors for the purpose of inducing said dealers and distributors to purchase its products for resale to the consuming public, respondent has made the following statements and representations:

Here's a comparison anyone can make. Take a piece of Fabray and crease it down as hard as possible with your fingernail. No matter how hard you crease it, there will be no crack. Do the same thing with oilcloth, however, and a decided crack will show up after which bits of the surface coating can be peeled away from the coarsely woven cheesecloth backing.

Here's another way you can definitely establish the superiority of Fabray to your own satisfaction. With a knife or your fingernail scrape the oilcloth coating. You can, of course, scrape through the top coating but you cannot possibly make it separate from its solid fibre backing. Do the same thing to oilcloth, and you can easily flake off large pieces of the surfacing material.

Here's the most amazing test of all. Take a piece of Fabray between your hands, as illustrated above, and rub it as you would a soiled handkerchief in washing it. No matter how hard you rub, you will find it very difficult to separate Fabray's smooth, tough surface from the backing. Treat oilcloth the same way and you will soon have only the flimsy scrim-like back in your hands.

In various of its advertisements respondent describes its product in the following language. "Looks, feels, wears, like finest oilcloth," and represents that said product can be used longer than the best oilcloth because it never cracks or peels.

In a number of its advertisements appearing in newspapers and magazines of general circulation throughout the several States of the

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United States, and in its advertising displays and other advertising literature, the respondent has made, and continues to make, unfair comparisons of the quality of "Fabray" with oilcloth, and in these comparisons refers to the "cheesecloth" backing of "ordinary oilcloth" and to the "open meshes of coarsely woven scrim" used in "ordinary oilcloth." In making said comparisons the respondent further represents that "In numerous exacting laboratory tests Fabray revealed wearing qualities as great or greater than ordinary oilcloth" and that it has a superior resistance to chipping and flaking.

In other advertisements the respondent uses an illustration wherein the prospective purchaser says, "Why, this is marvelous. It looks and feels like the best grade oilcloth," and the salesman responds, "Wears like it, too, Madam, but Fabray will not crack or peel like oilcloth." In other advertisements respondent makes use of the statement: "And not only that, Fabray does not crack or peel. It has an oilcloth surface, but a solid backing of tough fibre instead of coarsely woven cheesecloth. You can crease it, crumple it, or even scrape it, and still Fabray will not separate from its backing or show even the slightest crack."

In other advertisements respondent uses an illustration wherein the following statement appears:

Yes, Clopay shades save me plenty—but Fabray saves me even more on all oilcloth needs. Here's a real saving. Fabray wears fully as well as oilcloth but does not crack or peel. Costs one-third to one-half less. I thought Clopay shades were the last word in economy until I found Fabray. It is marvelous. It looks, feels and wears like the best oilcloth. Yet I can use it longer because it never cracks or peels. Best of all, I can afford to use Fabray many more ways than I ever did oilcloth because it costs one-third to one-half less. Fabray is a new and entirely revolutionary product made on tough solid fibre instead of on cheesecloth backing.

In other advertisements the respondent makes the following comparison of its product with oilcloth products:

Imagine getting 2½ yards of the finest inch shelf oilcloth for only ten cents. Impossible, of course. But, in Fabray, usually called fibre-backed oilcloth—you get every advantage of oilcloth and more—2½ yard rolls, only a dime a roll. You can fold it—crease it—wash it indefinitely but it will not crack or peel.

In advertising "Fabray" as used for shelving purposes, respondent uses the following language:

Now, for the first time they have a shelving that has all the advantages of the best oilcloth but can be creased down over the edges of shelves without cracking, that can be washed time after time without checking and peeling, that won't curl up at the corners, that never gets faded or dingy looking.

In its advertising of "Fabray" window shades, the respondent recommends, as a test for the product, the creasing of the shade

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sharply between the fingers and then smoothing it out. In connection with this test respondent represents, "A faint line may appear but there will be no crack or pinhole such as would immediately appear in ordinary clay filled cloth shades."

PAR. 7. All the statements and representations and comparisons hereinabove set out in paragraph 6, as made by the respondent in its various advertising literature, have falsely represented, directly, as well as by inference and implication, among other things: (1) that all grades of oilcloth, when creased, will reveal a decided crack and that bits of the surfaced coating can be peeled away from the backing; (2) that the backing of all grades of oilcloth consists of coarsely woven cheesecloth or coarsely woven scrim; (3) that the surfacing of all grades of oilcloth, upon being scraped with a sharp object, will separate from its backing to such an extent that large pieces of said surfacing material can be flaked off; (4) that the surfacing material of all grades of oilcloth can be separated from the backing thereof by rubbing the oilcloth as a soiled handkerchief would be rubbed in washing it; (5) that all grades of oilcloth have flimsy scrim-like backing; (6) that, in laboratory tests conducted, oilcloth does not reveal wearing qualities as great as "Fabray," the respondent's product; (7) that all grades of oilcloth will crack or peel; and (8) that cloth window shades are clay filled and readily crack or "pinhole" upon being creased, and have represented that respondent's product does not possess any of the defects or weaknesses hereinabove enumerated and attributed to oilcloth products and cloth window shades generally by the respondent in its advertising literature.

In truth and in fact, all grades of oilcloth will not crack or peel so that bits of the surfacing material can be peeled away from the backing. All grades of oilcloth are not made with a backing of coarsely woven cheesecloth or coarsely woven scrim so that the surfacing material thereof will flake off in large pieces or will be separated from said backing by rubbing the oilcloth as a soiled handkerchief would be rubbed in washing it, but have a backing of cotton sheeting superior to cheesecloth. All grades of oilcloth do not have flimsy scrim-like backing and all grades do not, upon being laboratory tested, reveal wearing qualities inferior to those of "Fabray," the respondent's product. Further, all cloth window shades are not clay filled so that they will readily crack or "pinhole" upon being creased, and many grades of said cloth window shades will not crack or "pinhole" when given treatment similar to treatment given respondent's products.

The respondent, through the statements and representations hereinabove set out, has falsely represented, directly, as well as by inference and implication, that all grades of oilcloth are subject to the weaknesses

true only of a restricted grade of cheap oilcloth, if true at all, and, in making comparisons of its product with oilcloth products, and with cloth window shade products, has not specified the respective grades of said products to which its products are being compared or the respective grades or qualities of said products that have been tested by the respondent in comparison tests with its products.

PAR. 8. The word "oilcloth," when used in connection with, or descriptive of, a material covering various surfaces means, and the trade and consuming public understand, and for many years have understood, it to mean that the surfacing material so being referred to or described is manufactured from cotton sheeting to which has been applied, on either one or both surfaces, a number of layers of paint composed of treated oils and pigments and finished with decorated designs printed thereon.

PAR. 9. The false and misleading advertising and representations hereinabove set out, on the part of the respondent, place in the hands of said retail dealers and distributors an instrument and a means whereby said dealers and distributors may commit a fraud upon a substantial portion of the consuming public by enabling such dealers to represent, offer for sale and sell the said product designated as "Fabray" as and for an oilcloth product.

There are many among competitors of the respondent who manufacture and sell similar fibre backed, or paper backed, products having an oiled surface similar to that on the respondent's product known as "Fabray" and who rightfully and truthfully advertise the qualities possessed by said products and in no manner misrepresent said products or their quality or unfairly disparage the products of other competitors, including the respondent. There are also among the competitors of the respondent many who manufacture and sell oiled cloth back products, generally designated as oilcloth, or who manufacture and sell cloth window shades, who do not, in any manner whatever, misrepresent the character and quality of the products manufactured by them and who do not in any way unfairly disparage the products manufactured by their competitors, including the respondent.

PAR. 10. The effect of the foregoing false and misleading advertisements and representations on the part of the respondent is to mislead a substantial number of retail merchants and dealers, as well as a substantial portion of the consuming public in the several States, by inducing them to believe that the representations as to the quality, character and nature of respondent's products are true and that respondent's statements and representations with reference to the oilcloth products of its competitors and the cloth window shade products

of other of its competitors are true, and to purchase substantial quantities of respondent's products in said beliefs.

The foregoing false and misleading statements and representations on the part of the respondent, including the various disparagements of competitors' products as set out in paragraph 6, have a tendency and a capacity to and do, divert a substantial volume of trade from competitors of the respondent engaged in similar businesses to the respondent, with the result that substantial quantities of said product known as "Fabray" are sold to said dealers and purchasers, and to the consuming public, on account of said beliefs induced by said false and misleading representations, and, as a consequence thereof, a substantial injury has been done by the respondent to substantial competition in commerce among the several States of the United States and in the District of Columbia, as hereinabove detailed.

PAR. 11. The acts and practices of respondent above set forth are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition 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 the 15th of November 1935 issued and served its complaint in this proceeding upon said respondent, Clopay Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On December 6, 1935, the respondent filed its answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and its counsel, Edmund P. Wood, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said

complaint, answer and stipulation, said stipulation having been approved and accepted, 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Clopay Corporation, is a corporation organized and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located in the city of Cincinnati, State of Ohio. For a period of more than one year, it has been engaged in the manufacture, distribution and sale of a certain oiled cellulose pulp-backed, or paper-backed, product to distributors and retailers for resale. This pulp-backed product is generally designated by the respondent as "Fabray" and is of two types. One type is comprised of a sheet of cellulosic material coated on both sides with an oil coating. This type of "Fabray" is used for window shades. The other type is comprised of a sheet of cellulosic material coated on one side only with an oil coating and decorated with a glossy finish. This type is used for shelf covering, wall covering and the like.

PAR. 2. The respondent causes said "Fabray" product, when sold to distributors and retail dealers, to be transported from its principal place of business in the city of Cincinnati, State of Ohio, to the respective purchasers thereof located in the District of Columbia and in States of the United States other than the State of Ohio. It has maintained, for a period of more than one year last past, a constant current of trade in its "Fabray" product, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business, is now, and has been at all times mentioned herein, engaged in substantial competition with other corporations, and with firms and individuals likewise engaged in the manufacture of an oiled cellulose pulp-backed, or paper-backed, product or an oiled cloth-backed product (commonly designated as oilcloth), or of cloth window shades, and in the distribution and sale of said products, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in the course and conduct of its business, has offered for sale, and sold, in commerce as hereinabove set out, its "Fabray" product in packages or containers. On the outside of said

packages or containers, by way of advertisement and inducement to purchase, there was attached a label, reading substantially as follows:

Fabray used like oilcloth. Fabray is usually described as "The Fibre-backed oilcloth." But its coated surface adheres more firmly to the solid fibre back than to the "cheesecloth" backing of ordinary oilcloth. Hence a superior resistance to chipping and flaking.

In advertisements inserted in newspapers and magazines of general circulation throughout the various States of the United States and in its other advertising literature and displays, the respondent makes use of the same statement and representation appearing on its labels, or statements and representations of similar import and effect. In certain of its advertisements, respondent referred and designated its "Fabray" product, without qualification, as "Fabray—Fibre-backed oilcloth." In certain other of its advertisements and on its display racks, respondent represented that said product "looks and wears like oilcloth and has an oilcloth surface." In other advertisements, it has represented that "Fabray has the same surface as the most expensive fabric-backed wall covering," and that said product is manufactured from "a new kind of material which looks, wears and feels just like oilcloth with advantages oilcloth cannot have."

Respondent has also represented in a number of advertisements that "In numerous exacting laboratory tests, Fabray revealed wearing qualities as great or greater than ordinary oilcloth," and that the product is "Wash Proof," "Fray Proof" and "Crack Proof." In advertising its Fabray window shades, and in displaying said window shades for sale to the public, respondent represented that they were "Non-Cracking," "Non-Fading," and "Non-Fraying."

PAR. 5. In truth and in fact, the product manufactured and sold by the respondent and designated as "Fabray" is not usually described as "Fibre-backed oilcloth" and is not an oilcloth product within the accepted meaning of the term "oilcloth" as understood by the purchasing public and the trade generally. Numerous exacting laboratory tests reveal that "Fabray" does not possess wearing qualities in all respects as great or greater than oilcloth of the better and more expensive grades, but does possess wearing qualities in certain respects as great or greater than oilcloth of the cheaper and less expensive grades. It is not "Wash Proof," "Fray Proof," and "Crack Proof," but is washable, does not fray in the usual meaning of the word because of its paper backing, and does not crack under conditions of ordinary usage. The window shades manufactured from the product designated as "Fabray" are not uniformly "Non-Fading," but they are "Non-Cracking" under ordinary conditions of use, and are "Non-Fraying." Inasmuch as the window shade is

manufactured from paper, and no filler is employed, the product does not develop cracks or pinholes by virtue of the filler falling out, nor does it fray, although, due to the nature of the material, it tears more easily than cloth, particularly at the margins.

PAR. 6. Respondent, in the course and operation of its business, and for the purpose of inducing the purchase of its products, has adopted and followed a course of action designed to unfairly compare its product to oilcloth products generally, and to cloth window shades generally.

In certain of its advertising literature distributed to prospective retail dealers and distributors for the purpose of inducing said dealers and distributors to purchase its product for resale to the consuming public, respondent has suggested certain comparative tests between its product and oilcloth products. The advertisements suggesting the nature of said tests read as follows:

Here's a comparison anyone can make. Take a piece of Fabray and crease it down as hard as possible with your fingernail. No matter how hard you crease it, there will be no crack. Do the same thing with oilcloth, however, and a decided crack will show up after which bits of the surface coating can be peeled away from the coarsely woven cheesecloth backing.

Here's another way you can definitely establish the superiority of Fabray to your own satisfaction. With a knife or your fingernail scrape the oilcloth coating. You can, of course, scrape through the top coating but you cannot possibly make it separate from its solid fibre backing. Do the same thing to oilcloth, and you can easily flake off large pieces of the surfacing material.

Here's the most amazing test of all. Take a piece of Fabray between your hands, as illustrated above, and rub it as you would a soiled handkerchief in washing it. No matter how hard you rub, you will find it very difficult to separate Fabray's smooth, tough surface from the backing. Treat oilcloth the same way and you will soon have only the flimsy scrim-like back in your hands.

In various of its advertisements, respondent describes its product in the following language: "Looks, feels, wears like finest oilcloth," and represents that said product can be used longer than the best oilcloth because it never cracks or peels. In a number of its advertisements appearing in newspapers and magazines of general circulation throughout the various States of the United States, and in its advertising displays and other advertising literature, respondent has made comparisons of the quality of "Fabray" with oilcloth generally, and in these comparisons refers to the "cheesecloth" backing of "ordinary oilcloth," and to the "open meshes of coarsely woven scrims" used in ordinary oilcloth.

In its advertising of Fabray window shades, respondent recommends a certain creasing test for the product, and represents that as a result of the test "A faint line may appear. There will be no cracks or pinholes, such as would immediately appear in ordinary clay filled cloth shades."

PAR. 7. The statements, representations and comparisons made use of by the respondent in its various advertising literature have the capacity and tendency to create in the minds of a substantial portion of the purchasing public, the false and erroneous beliefs: (1) that all grades of oilcloth, when creased, will reveal a decided crack and that bits of the surface coating can be peeled away from the backing; (2) that the backing of all grades of oilcloth consists of coarsely woven cheesecloth or coarsely woven scrim; (3) that the surfaces of all grades of oilcloth, upon being scraped with a sharp object, will separate from its backing to such an extent that large pieces of said surfacing material can be flaked off; (4) that the surfacing material of all grades of oilcloth can be separated from the backing thereof by rubbing the oilcloth as a soiled handkerchief would be rubbed in washing it; (5) that all grades of oilcloth have flimsy scrim-like backing; (6) that laboratory tests reveal that oilcloth generally does not have wearing qualities as great as Fabray; (7) that all grades of oilcloth will crack or peel; and (8) that all cloth window shades are clay filled and readily crack or "pinhole" upon being creased.

In truth and in fact the better grades of oilcloth products will not crack or peel so that bits of the surfacing material can be peeled away from the backing. All grades of oilcloth are not made with a backing of coarsely woven cheesecloth, or coarsely woven scrim. The surfacing material of those grades of oilcloth that do not have a backing of coarsely woven cheesecloth, or coarsely woven scrim, will not readily flake off in large pieces, or readily become separated from said backing. Said better grades of oilcloth do reveal wearing qualities superior to those of "Fabray." On the other hand, "Fabray," upon being laboratory tested, compares favorably in many respects with oilcloth products of the cheaper grades commonly backed with cheesecloth or coarsely woven scrim. Likewise, "Fabray" window shades, upon being laboratory tested, compare favorably in many respects with cheaper grade cloth window shades, and particularly with clay filled cloth window shades. All grades of cloth window shades are not clay filled so that they will readily crack or pinhole upon being creased. Many grades of said cloth window shades will not crack or "pinhole" when given treatment similar to treatment given to "Fabray."

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The respondent, in statements and representations hereinabove set out, has unfairly represented directly, as well as by inference and implication, that all grades of oilcloth are subject to the weaknesses true only of restricted grades of cheap oilcloth, and in making comparisons of its product with oilcloth products and with cloth window shade products, has not specified the respective grades of said products to which its product is being compared, or the respective grades or qualities of said products that have been tested by the respondent in comparative tests with its product.

PAR. 8. The word "oilcloth," when used in connection with, or descriptive of, a material covering various surfaces, means, and the trade and consuming public understand, and for many years have understood it to mean, that the surfacing material so being referred to or described is manufactured from either cotton sheeting, or cheesecloth, or the like, to which has been applied, on either one or both surfaces, a number of layers of paint composed of treated oils and pigments and finished with decorated designs printed thereon.

PAR. 9. The statements, representations, and advertisements used by the respondent in the sale of its product, place in the hands of said retail dealers and distributors an instrument and a means whereby said dealers and distributors may commit a fraud upon a substantial portion of the consuming public by enabling such dealers to represent, offer for sale, and sell "Fabray" as and for oilcloth.

There are many among the competitors of the respondent who manufacture and sell oiled cloth backed products, generally designated as oilcloth, or who manufacture and sell cloth window shades, who do not in any manner whatever misrepresent the character and quality of the products manufactured by them, and who do not in any manner unfairly disparage products manufactured by their competitors, including the respondent.

PAR. 10. The unfair and misleading statements and representations on the part of the respondent, including the various unfair disparagements of certain classes of competitors' products, as set out, have a capacity and tendency to unfairly divert a substantial volume of trade from the competitors of the respondent referred to in paragraph 9 hereof. As a result substantial quantities of said product known as "Fabray" are sold to said dealers and purchasers, and to the consuming public, and as a consequence thereof, injury has been done by respondent to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Clopay 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 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, the answer of the respondent, and the agreed stipulation of facts entered into between the respondent herein, Clopay Corporation, and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, 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, Clopay Corporation, and its officers, representatives, agents and employees, in connection with the advertising, offering for sale, and sale and distribution of its oiled cellulose pulp-backed, or paper-backed, products of various types generally designated as "Fabray," in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

A. Representing, directly or by inference, through advertising booklets, advertisements inserted in newspapers and magazines, pamphlets, folders, stickers, or any other advertising literature, or on containers for its product, or in any other manner whatever:

1. That Fabray is an oilcloth product or fibre-backed oilcloth product;
2. That Fabray is generally described as an oilcloth product or a fibre-backed oilcloth product;
3. That Fabray possesses wearing qualities as great as the more expensive grades of oilcloth;
4. That Fabray is Wash Proof, Fray Proof, and Crack Proof;
5. That Fabray window shades are non-fading, when such is not the fact;

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6. That all grades of oilcloth, when creased, will reveal a decided crack.

7. That bits of the surface coating of all grades of oilcloth can be peeled away from the backing;

8. That the backing of all grades of oilcloth consists of coarsely woven cheesecloth or coarsely woven scrim;

9. That the surfaces of all grades of oilcloth, upon being scraped with a sharp object, will separate from its backing to such an extent that large pieces of said surfacing material can be flaked off;

10. That the surfacing material of all grades of oilcloth can be separated from the backing thereof by rubbing the oilcloth as a soiled handkerchief would be rubbed in washing it;

11. That all grades of oilcloth have flimsy scrim-like backing;

12. That laboratory tests reveal that oilcloth generally does not have wearing qualities as great as Fabray;

13. That all grades of oilcloth will crack or peel;

14. That all cloth window shades are clay filled and readily crack or "pinhole" upon being creased;

15. That all grades of oilcloth, and all grades of cloth window shades, are subject to the weaknesses true only of restricted grades of cheap oilcloth, or of cheap cloth window shades;

16. That comparative tests made by the respondent, or by others, reveal results favorable to Fabray, without also stating the restricted grades or qualities of the products that were actually tested in comparison with respondent's product Fabray;

17. That various grades and qualities of oilcloth have certain weaknesses without specifying the grades and qualities of oilcloth to which said statements refer.

B. Using the word "ordinary" in conjunction or connection with the word "oilcloth" or the words "clay filled window shades" to describe or refer to various grades or qualities of oilcloth, or cloth window shades, without specifying the grades and qualities of oilcloth, or cloth window shades, actually being described or referred to.

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.

Complaint

IN THE MATTER OF

P. A. LEFEBVRE & COMPANY, LIMITED, AND ZATIQUE
LACOMB

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

Docket 2933. Complaint, Sept. 30, 1936—Decision, Nov. 20, 1936

Where a corporation and an individual engaged in the manufacture, sale and distribution of a product named "Magic Gas," for mixing with gasoline or kerosene for use in internal combustion engines; in advertising the same in pamphlets, and through labels attached to the containers thereof, and in newspapers, periodicals, radio broadcasts, testimonials, placards, and otherwise—

Falsely represented that said product, thus mixed and used in the engines of motor vehicles, increased mileage and prevented or removed and eliminated carbon and carbon troubles and improved starting, pickup, and power and performance, and increased economy and the life of the motor, and equalled gasoline at three cents a gallon, and solved the gasoline problem;

With capacity and tendency to mislead and deceive purchasers of their said product into believing that when buying the same from them they were obtaining one that would, when used by them, increase the efficiency of a motor vehicle, and that they were thereby gaining an advantage in the purchase of said product, and with effect of unfairly diverting trade to them from many competitors who make and distribute products that increase the efficiency of such vehicles and sell and distribute products designated for similar usage to that sold and distributed by them and do not misrepresent the capacities or effects thereof; to their substantial injury and prejudice:

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

Mr. T. H. Kennedy 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 P. A. Lefebvre & Company, Limited, a corporation, and Zatique Lacombe, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof will be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. The respondent P. A. Lefebvre & Company, Limited, is a corporation existing and doing business under and by virtue of the laws of the Dominion of Canada, having its principal place of