

Syllabus

IN THE MATTER OF
LUMBER MILLS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2796. Complaint, May 4, 1936—Decision, Dec. 7, 1936*

Where a corporation engaged in the distribution and sale of sash, windows, doors, molding, and mill work, in substantial competition with others likewise thus engaged, and also with those engaged in manufacturing, distributing and selling such products, and including among its said competitors many who do not manufacture the products dealt in by them or in any way represent themselves as manufacturers of such products, and many who manufacture, distribute, and sell such products made from the botanical "*Pinus ponderosa*," and who do not in any way represent said products as actually made from the botanical "*Pinus strobus*," or white pine, but truthfully represent the same as made from the wood of and from which they are in fact made—

- (a) Represented, through use of word "Mills" in its corporate name, displayed and featured in its catalogs and price lists and on its letterheads, order blanks, invoices, and other literature, and through a design displaying and featuring said word, and statement that it was "offering these remarkable values at this time to keep our factory busy during the winter months," etc., that it owned, operated, or controlled a mill wherein lumber products were converted or made into sash, windows, doors, molding, and similar mill work, notwithstanding fact it was not, as understood by trade and purchasing public generally, such a manufacturer, with which a substantial portion of wholesale and retail purchasers of such products prefer to deal direct, as thereby securing them, in their belief, closer prices, superior quality and other advantages, as compared with dealing through a selling agency or middleman; and
- (b) Made use of words "white pine" in catalogs and price lists to designate wood from which many of the products sold by it were made, notwithstanding fact wood in question was the botanical "*Pinus ponderosa*," obtained from the species native to the mountainous region of the Pacific Coast, and was not the substantially more costly and generally preferred commercial white pine, or botanical "*Pinus strobus*," to which, in softness, ease of working, ability to stay in place, relative freedom from resinous substances, durability under exposure, and uniformity, it was inferior;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said various representations were true, and with the result that, induced by such false and misleading statements and representations, and as a consequence of the mistaken and erroneous beliefs thus induced, the consuming public purchased a substantial volume of its said products and trade was unfairly diverted to it from its competitors likewise engaged in distributing and selling similar products made from wood, and who truthfully advertise and represent the nature and character of their business and of the wood from which their said products are actually made; to the substantial injury of competition in commerce:

Complaint

24 F. T. C.

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.

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 Lumber Mills Co., a corporation, 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, Lumber Mills Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 11 So. La Salle Street in the city of Chicago, State of Illinois. Respondent is now, and has been for some years, engaged in the business of distributing and selling, in commerce as herein set out, sash, windows, doors, molding, and mill work made from wood.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said sash, windows, doors, molding, and mill work, when sold, to be transported from its office and principal place of business in the State of Illinois or from the place of origin of said shipment to the purchasers thereof located at various points in States of the United States other than the State of Illinois or the State of the origin of said shipment and there is now, and has been at all times since the organization of respondent corporation, a constant current of trade and commerce in said sash, windows, doors, molding, and mill work so distributed and sold by the respondent, between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent is now, and has been, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling or of manufacturing, distributing and selling sash, windows, doors, molding, and mill work in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course of the operation of said business, and for the purpose of inducing individuals, firms, and corporations to purchase

its sash, windows, doors, molding, and mill work, respondent has caused catalogs and price lists to be printed and circulated throughout the various States of the United States to customers and prospective customers. In all of said catalogs and price lists the respondent has caused its corporate name "Lumber Mills Co." to be prominently and conspicuously displayed. Said corporate name containing the word "Mills," is also prominently displayed on respondent's letterheads, order blanks, invoices, and other business literature. Respondent has also adopted a design, the same consisting of the word "Lumber" in cut-out letters with a black background and the letters "MILLS CO." in considerably larger type directly thereunder, the entire design being shaped somewhat like a shield and having the general appearance of a trademark. In some of its advertising literature the respondent has also made use of the following statement: "Prices are going higher. In the face of a rising market we are offering these remarkable values at this time to keep our factory busy during the winter months, to help employment and to help our dealer customers in combatting mail order competition."

The use of the word "Mills" in its corporate name and in the design above referred to, together with the use of statements identical with or similar to the hereinabove quoted statement serve as representations to the respondent's customers, prospective customers and the general buying public that the respondent owns, operates, or controls a mill wherein lumber products are converted or manufactured into sash, windows, doors, molding, and similar mill work.

PAR. 5. Respondent does not, in fact, own, operate, or control any mill or mills for the manufacture from lumber of mill work such as windows, sash, doors, and moldings. Respondent is not engaged in the business of manufacturing and is not itself a manufacturer as those terms are understood by the trade and the purchasing public generally, but is engaged solely in a business of distributing and selling sash, windows, doors, molding, and mill work manufactured from lumber by others.

PAR. 6. A substantial portion of the wholesale and retail purchasers of sash, windows, doors, molding, and mill work have expressed, and have, a preference for dealing direct with the manufacturer of products being purchased. Such purchasers believe that they secure closer prices, superior quality and other advantages in dealing direct with the manufacturer rather than a selling agency or middleman.

PAR. 7. In the course of the operation of said business, and for the purpose of inducing individuals, firms, and corporations to purchase its sash, windows, doors, molding, and mill work, the respondent, in its aforementioned catalogs and price lists, has made extensive use of

the words "white pine" to designate the wood from which many of the wood products sold by it are made. The designation of said products by use of the words "white pine" in describing them serves as a representation to customers, prospective customers and the purchasing public generally that said products, to wit, sash, windows, doors and moldings are actually made of and from white pine.

The wood from which said sash, windows, doors, and moldings, designated by the respondent as "white pine," are actually produced, is obtained from that certain species of tree native to the mountainous regions of the Pacific slope, botanically designated as "*Pinus ponderosa*." Said *Pinus ponderosa* does not, either botanically or by common name or in the character of lumber made therefrom, belong to that group of pine species known as white pine as set forth in Paragraph Eight.

PAR. 8. There is a certain group of pine species known both popularly and botanically as "white pines." They are a species of the genus *Pinus*, having certain botanical marks of distinction from other pines, and are further characterized by light, close-grained, soft wood in which the early- and late-formed portions of the annual rings or layers are not sharply defined and have thin and nearly white sap wood. Among the species of pine belonging to said described white pine groups is that botanically known as "*Pinus strobus*." For many years *Pinus strobus* has been known as a building wood, has proved its remarkable value and has gained universal esteem among the trade and the purchasing public generally under its common designation of "white pine."

The wood of *Pinus strobus* is commonly characterized by its softness, ease of working, its ability to stay in place after being fitted, its comparative freedom from resinous substances, its durability in uses where exposed to influences of decay and by its exceptionally high degree of uniformity of quality both locally and throughout its range and in individual specimens of the species. In each of these respects, and especially as regards uniformity of quality, the said *Pinus strobus* excels *Pinus ponderosa*. By reason of the above described characteristics and excellence products made from the *Pinus strobus* have a general tendency in lumber markets to command, and in general have commanded, a substantially higher price than products made from *Pinus ponderosa*. A substantial portion of the purchasing public have expressed, and have, a preference for products made from genuine white pine over products made from *Pinus ponderosa* or any other species of wood.

PAR. 9. Many of the respondent's competitors who manufacture, distribute and sell sash, windows, doors, and molding and other wood

products, including lumber, made from *Pinus ponderosa* do not in any way represent that said products are actually made from *Pinus strobus* or white pine but truthfully represent said products to be made from the wood of and from which they are actually made.

Many of respondent's competitors who distribute and sell sash, windows, doors, moldings and similar mill work do not manufacture the products sold by them and do not in any way represent that they are the manufacturer of said products.

PAR. 10. Each and all of the false and misleading statements and representations made by the respondent in designating itself as a manufacturer by use of the word "Mills" in its corporate name and otherwise and in designating or describing the wood from which its sash, windows, doors, and moldings are made as being white pine or *Pinus strobus*, as hereinabove set out, in its catalogs, price lists and other advertising literature, in offering for sale and in selling its products was, and is, calculated to, and had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts, advertisements and misrepresentations of the respondent, as hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondent's products such as sash, windows, doors and molding with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the business of distributing and selling similar products made from wood who truthfully advertise and represent the nature and character of their business and the nature and character of the wood from which said products are actually made. As a result thereof, substantial injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 11. The above and foregoing acts, practices, and representations of the respondent have been and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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 Commis-

sion, to define its powers and duties, and for other purposes," the Federal Trade Commission, on May 4, 1936, issued and served its complaint in this proceeding upon respondent, Lumber Mills Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by James T. Welch, attorney for the Commission, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Edward M. Meany, for the respondent; and said 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 said complaint, the answer thereto, testimony and other evidence; 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. The respondent, Lumber Mills Co., was organized on January 4, 1904 under and by virtue of the laws of the State of Illinois. Its principal office and place of business is located at 11 South La Salle Street, in the city of Chicago, State of Illinois. It is now, and has been, since its incorporation, engaged in the business of distributing and selling sash, windows, doors, molding, and mill work made from wood.

When orders are received for any of the products made from wood which it sells, it causes said products to be shipped and transported from its principal place of business in the State of Illinois, or from some other point where said products are manufactured or stored, to the purchasers thereof located at various points, in States of the United States other than the State of Illinois, or the State from which said shipments originate. The respondent has, at all times, maintained a constant current of trade in said products made from wood, in commerce among and between the various States of the United States and in the District of Columbia.

At all times since its incorporation, respondent has been in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling, or of manufacturing, distributing and selling sash, windows, doors, molding, and mill work made from wood, in commerce among and

between the various States of the United States and in the District of Columbia.

PAR. 2. In order to induce the purchase of the products made from wood which it sells, respondent has caused to be printed and circulated throughout the various States of the United States to customers and prospective customers, various catalogues and price-lists. In all of said catalogues and price-lists, its corporate name, "Lumber Mills Co.," has been prominently and conspicuously displayed. The corporate name containing the word "Mills" is also prominently displayed on respondent's letterheads, order blanks, invoices and other business literature. The respondent has also adopted a design consisting of the word "Lumber" in cut-out letters with a black background and the letters "Mills Co." in considerably larger type directly thereunder. The entire design is shaped like a shield and has a general appearance of a trade-mark. In some of its advertising literature, respondent has also made use of the following statement:

Prices are going higher. In the face of a rising market we are offering these remarkable values at this time to keep our factory busy during the winter months, to help employment and to help our dealer customers in combatting mail order competition.

The use of the word "Mills" in its corporate name and in the design above referred to, together with the use of statements identical with or similar to the statement, hereinabove quoted, serve as representations to the respondent's customers and the general buying public that the respondent owns, operates, or controls a mill wherein lumber products are converted or manufactured into sash, windows, doors, molding, and similar mill work.

PAR. 3. Respondent does not, in fact, own, operate or control any mill or mills for the manufacture from lumber of mill work such as windows, sash, doors, and molding. Respondent is not engaged in the business of manufacturing and is not itself a manufacturer as those terms are understood by the trade and the purchasing public generally, but is engaged solely in a business of distributing and selling sash, windows, doors, molding, and mill work manufactured from lumber by others.

PAR. 4. A substantial portion of the wholesale and retail purchasers of sash, windows, doors, molding and mill work have expressed, and have, a preference for dealing direct with the manufacturer of products being purchased. Such purchasers believe that they secure closer prices, superior quality and other advantages in dealing direct with the manufacturer rather than a selling agency or middleman.

PAR. 5. In its catalogues and price-lists, the respondent has also used the words "white pine" to designate the wood from which many of the wood products sold by it are made. This designation serves as a representation to customers, prospective customers and the purchasing public generally that said products are actually made of, and from, white pine.

The wood used in making said sash, windows, doors, and molding, designated by the respondent as being "white pine," is obtained from that certain species of tree native to the mountainous regions of the Pacific slope which is botanically designated as "*Pinus ponderosa*." Said *Pinus ponderosa* does not, either botanically or by common name, or in the character of lumber made therefrom, belong to that group of pine species known as white pine.

PAR. 6. There is a certain group of pine species known both popularly and botanically as "white pines." They are a species of the genus *Pinus*, having certain botanical marks of distinction from other pines, and are further characterized by light, close-grained, soft wood in which the early and late formed portions of the annual rings or layers are not sharply defined and have thin and nearly white sap wood. Among the species of pine belonging to said described white pine groups is that botanically known as "*Pinus strobus*." For many years *Pinus strobus* has been known as a building wood, has proved its remarkable value and has gained universal esteem among the trade and the purchasing public generally under its common designation of "white pine."

The wood of *Pinus strobus* is commonly characterized by its softness, ease of working, its ability to stay in place after being fitted, its comparative freedom from resinous substances, its durability in uses where exposed to influences of decay and by its exceptionally high degree of uniformity of quality both locally and throughout its range and in individual specimens of the species. In each of these respects, and especially as regards uniformity of quality, the said *Pinus strobus* excels *Pinus ponderosa*. By reason of the above described characteristics and excellence, products made from the *Pinus strobus* have a general tendency in lumber markets to command, and in general have commanded, a substantially higher price than products made from *Pinus ponderosa*. A substantial portion of the purchasing public have expressed, and have, a preference for products made from genuine white pine over products made from *Pinus ponderosa* or any other species of wood.

PAR. 7. Many of the respondent's competitors who manufacture, distribute and sell sash, windows, doors, and molding and other wood products, including lumber, made from *Pinus ponderosa* do not in

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any way represent that said products are actually made from *Pinus strobus* or white pine but truthfully represent said products to be made from the wood of and from which they are actually made.

Many of respondent's competitors who distribute and sell sash, windows, doors, moldings and similar mill work do not manufacture the products sold by them and do not in any way represent that they are the manufacturers of said products.

PAR. 8. The false and misleading statements and representations made by the respondent in designating itself as a manufacturer by use of the word "Mills" in its corporate name and in its advertising literature, and in designating or describing the wood from which its wood products are made as being white pine, in its catalogues, price-lists and other advertising literature, in offering for sale and selling its products, were, and are, calculate to, and had, and now have, a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. As a direct consequence of the mistaken and erroneous beliefs, induced by the false and misleading statements and representations above referred to, the consuming public has purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the business of distributing and selling similar products made from wood, who truthfully advertise and represent the nature and character of their business and the nature and character of the wood from which said products are actually made. As a result thereof, substantial injury has been, and is now being, done by respondent to 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, Lumber Mills Co., 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 DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent

¹ Order published as modified on Feb. 24, 1937.

ent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and the Commission having made its findings as to the facts and its 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, Lumber Mills Co., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of sash, windows, doors, molding, and mill work made from wood in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the words "white pine," or the letters "w. p." alone or in conjunction with any other word or words of similar meaning to designate any lumber product made from the trees of the species *Pinus Ponderosa*;

2. Representing, directly or indirectly, through the use of the words "white pine" or the letters "w. p.", alone or in conjunction with any other word or letters, that sash, windows, doors, molding and mill work made from wood of the tree species *Pinus Ponderosa* are made from white pine;

3. Representing, directly or indirectly, through the use of the word "Mills" or any word or words of similar import and meaning in its business or advertising literature that it is the manufacturer of the products which it sells or that it owns, operates or controls any mills wherein said products are manufactured;

4. Using the word "Mills," alone or in conjunction with other words of similar import and meaning in its corporate or trade name, unless there appear in close proximity thereto and in letters of equal prominence other words clearly indicating that it is not the manufacturer of the products which it sells and does not own, operate or control the mills wherein said products are actually made.

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
PLOUGH, INCORPORATED

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

Docket 2817. Complaint, May 21, 1936—Decision, Dec. 7, 1936

Where a corporation engaged in the distribution and sale of a certain acetyl salicylic acid product under the designation "St. Joseph Aspirin," in substantial competition with those likewise engaged in the distribution and sale of such products, and including many who manufacture, distribute, and sell aspirin without misrepresenting the quality or character of their respective products or the effectiveness thereof in use for the treatment of various conditions of the body, and who do not falsely disparage such products of their respective competitors; in advertising the same in newspapers and periodicals of general circulation throughout the United States, together with featured display of the aforesaid name of its said product—

(a) Represented that same gave quicker relief than, and was superior to, other aspirin and was fully effective for pains and colds and always brought prompt relief to those suffering therefrom, and that it exceeded in purity and accuracy of ingredients the rigid standards set by the United States Government, through such statements, in substance, as thus indicated, and "Brings quicker relief", etc.;

Facts being that it does not give quicker relief than other aspirin of standard quality that meets requirements of United States Pharmacopoeia, is not fully effective for treatment of pains and colds and has no effect on the causative factors thereof, its use does not always bring prompt relief to those suffering from conditions named, Government has no stipulated standards for aspirin, and specifications of the said Pharmacopoeia are minimum, with no upper limit, and its aforesaid representations and statements, with respect to nature and effect of its said product, were exaggerated, misleading and untrue, and unfairly disparaged such products of its competitors; and

(b) Represented that the cellophane wrappings of the containers of its said aspirin protected the purity of said product and were materially beneficial thereto, and that such a product required such wrapping under usual and normal conditions of sale to protect it from deterioration caused by moisture, and that failure so to wrap such products decreased their value or potency, through such statements as "Purity further protected by moisture-proof cellophane wrapping," and "to guard this purity further, each package is wrapped and sealed in moisture-proof cellophane;"

Facts being aspirin does not dissolve or deteriorate under usual and customary methods of merchandising, and wrapping of the containers of such product in moisture proof cellophane wrapping does not add to or protect the purity thereof and is not materially beneficial thereto, and failure of manufacturer or distributor of such products thus to wrap same does not decrease their value or potency;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into erroneous belief that its said "St. Joseph Aspirin"