

Complaint

IN THE MATTER OF

FEDERAL ENAMELING AND STAMPING COMPANY

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

Docket 2842. Complaint, June 11, 1936—Decision, Oct. 1, 1937

Where a corporation engaged in manufacture, sale, and distribution of enamel kitchen and other enamelware, under trade name "FEDERALWARE," in competition with many engaged in sale and distribution, among the various States and in the District of Columbia, of such ware and who do not misrepresent the quality thereof or resort to unfair acts and practices in sale and distribution of their said products; in advertising its said products through radio announcements and programs, hand bills, booklets, display cards, window trims, sales promotion announcements, letters, etc., and through advertisements in periodicals, newspapers and catalogs—

- (a) Represented that its said product would not chip and was thirty-six times more durable than ordinary enamelware and would save its cost to the ultimate purchaser, in one year or less, through fuel savings, facts being said products were not, and never had been, chip-proof or chip-proofed as represented, nor thirty-six times more durable, nor to a substantial degree more durable, than ordinary enamelware, would not and did not save their cost to the purchaser as above set forth, nor save purchaser any material amount in fuel; and
- (b) Represented that its said product was stainless, facts being its said enamelware would not withstand, without showing signs of etching or stain, tentative test of boiling in citric and malic acid solution under certain conditions arrived at by Committee on Standardization of Tests of Technical Research Service of the Porcelain Enamel Institute;

With tendency and capacity to mislead and deceive purchasing public and retail dealers, and with effect of so misleading such public and dealers into erroneous belief that aforesaid various representations were true, and into buying its said products on account of such mistaken beliefs, and with effect of placing in hands of wholesalers and retailers means of deceiving ultimate purchasers through its said advertising and representations, and of unfairly diverting trade to it from competitors likewise engaged in sale, in commerce among the States and in the District of Columbia, of truthfully advertised products of the same kind and nature:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. T. H. Kennedy and *Mr. Floyd O. Collins* for the Commission.
Stebbins, Blenko & Parmelee, of Pittsburgh, Pa., 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

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Federal Trade Commission, having reason to believe that Federal Enameling and Stamping Company, 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 said Commission that a proceeding by it in respect thereof would be to the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Federal Enameling and Stamping Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its factory and principal place of business at McKees Rocks, Pa. Respondent also maintains a mailing address at Pittsburgh, Pa. Respondent is, and for more than five years last past has been, engaged in the manufacture of porcelain enamel kitchen utensils which it sells under the trade name of "Federalware," and otherwise and in the selling thereof between and among the various States of the United States and in the District of Columbia. During all of said time it has caused and still causes such products, when sold by it, to be transported from its place of business in Pennsylvania or other places within the United States to purchasers thereof, some located in the State of Pennsylvania and others located in various other States of the United States other than the State of origin of the shipment and in the District of Columbia. In the course and conduct of its said business, respondent is now, and for more than five years last past, has been in constant competition with other corporations and with persons, firms, and partnerships engaged in the sale of similar products in commerce among and between the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its business described herein respondent, for more than two years last past, has by means of catalogues, advertising matter carried in magazines having national distribution and in metropolitan daily newspapers, radio announcements, radio programs, labels, booklets, stickers, dodgers, stuffers, folders, display cards, counter cards, window trims, "guarantee" cards, sales promotion announcements, letters, and by other means represented, and still represents that said products are:

- (a) Chip proof,
- (b) Chip proofed,
- (c) Stainless,
- (d) Thirty six times more durable than ordinary enamelware, or to a substantial degree more durable than ordinary enamelware, and that
- (e) The covers or lids supplied with said products are chromium;
- (f) Said products will save their cost to the ultimate purchaser in one year or less through fuel saving.

In truth and in fact each and every said representation has been and is untrue, and said products are not nor have they ever been chip proof, chip proofed, stainless, thirty six times more durable, nor to a substantial degree more durable than ordinary enamelware, nor are the covers or lids supplied with said products chromium nor have they ever been chromium, nor will said products save their cost in fuel saving in one year or less time. There is a preference by a substantial number of retail dealers in products similar to those of respondent hereinabove described and by a substantial part of the purchasing public for products that are chip proof, chip proofed, stainless, thirty six times more durable, or substantially more durable than ordinary enamelware and that have chromium covers or lids and that will save their cost to the ultimate purchaser in one year or less through fuel saving.

The aforesaid representations by the respondent have had and still have a capacity and tendency to mislead and deceive, and have misled and deceived and still mislead and deceive retailers and the purchasing public into the erroneous belief that the said products of the respondent have all of the properties, capacities or effects claimed for them by the respondent as aforesaid and the use of said misrepresentations causes them to purchase respondent's products in such erroneous belief. The aforesaid representations by the respondent have placed and still place in the hands of retailers of the products of respondent hereinabove described the means of misleading and deceiving the purchasing public.

PAR. 3. There are among the competitors of respondent manufacturers and distributors of products similar to those of respondent hereinabove described who truthfully represent their said products. There are also among said competitors of respondent manufacturers and distributors who do not misrepresent the properties, capacities, or effects of their said products.

By the representations made by the respondent as set out hereinabove, trade has been and still is unfairly diverted to the respondent from such competitors. Thereby substantial injury has been done and still is being done by respondent to competition in interstate commerce.

PAR. 4. The above acts and things done by the respondent are all to the injury and prejudice of the public and competitors of respondent in interstate commerce 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 Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on June 11, 1936, issued and served its complaint in this proceeding upon respondent, Federal Enameling and Stamping Company, a corporation, 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 Thomas H. Kennedy, attorney for the Commission, before John W. Addison, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by William H. Parmelee, attorney 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 said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Federal Enameling and Stamping Company, is a Pennsylvania corporation, organized and existing under and by virtue of the laws of the State of Pennsylvania. Its principal place of business is located at McKees Rocks, Pa. Respondent maintains a mailing address at Pittsburgh, Pa. Respondent is now, and has been since 1913, engaged in the manufacture, sale and distribution of enamel kitchenware and other enamelware and has been manufacturing, selling, and distributing said enamelware under the trade name of "FEDERALWARE." Respondent causes said product, when sold, to be transported in commerce, from its different places of business, to purchasers thereof located at various points in States of the United States other than the State of origin of said shipment, and in the District of Columbia. Respondent maintains a constant current of trade and commerce in said products among and between the various States of the United States and in the District of Columbia.

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Findings

PAR. 2. During the course and conduct of respondent's business as hereinabove set out, respondent has been, and is now, in active, substantial competition with other corporations, and with individuals, firms, and partnerships, likewise engaged in the sale and distribution of enamel kitchenware and other enamelware, in commerce among and between the various States of the United States and the District of Columbia. There are among respondent's competitors many who are engaged in the sale and distribution, in commerce among and between the various States of the United States and the District of Columbia, of enamelware and enamel kitchenware who do not misrepresent the quality of the enamelware and enamel kitchenware sold by them, and who do not resort to unfair acts and practices in the sale and distribution of their said products.

PAR. 3. In the course and conduct of respondent's business in selling and offering for sale its enamel kitchenware and other enamelware, respondent advertises said products through radio announcements, radio programs, handbills, booklets, stickers, dodgers, stuffers, folders, display cards, counter cards, window trims, guarantee cards, sales promotion announcements, letters, and through advertisements in magazines, newspapers and through the use of catalogs. Through the use of said advertising mediums, and in other ways and by other means, respondent has represented and still represents, that said products are:

Chip-proof;

Chip-proofed;

Stainless;

36 times more durable than ordinary enamelware or to a substantial degree more durable than ordinary enamelware; and that said products will save their cost to the ultimate purchaser in one year or less through fuel savings.

PAR. 4. Said representations had and now have the tendency and capacity to mislead and deceive the purchasing public and retail dealers, and have misled, and do now mislead, the purchasing public and retail dealers into the erroneous belief that said representations are true, and into the belief that said products sold and distributed by respondent will not chip and will not stain; that said products are 36 times more durable than ordinary enamelware or are to a substantial degree more durable than ordinary enamelware, and that said products will save their cost to the purchaser in one year or less through fuel savings.

PAR. 5. Each and every said representation as above set out has been and is untrue, for in truth, and in fact, said products are not now, neither have they ever been chip-proof. Said products are

Conclusion

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not now, neither have they ever been chip-proofed. Said products are not now, neither have they ever been 36 times more durable than ordinary enamelware nor to a substantial degree more durable than ordinary enamelware. Said products do not now, neither did they ever save their cost to the purchaser in one year or less through fuel savings. Neither will they now nor did they ever save the purchaser any material amount in fuel.

PAR. 6. There is a preference on the part of a substantial number of retail dealers in enamelware and enamel kitchenware, and a substantial portion of the purchasing public, for enamelware and enamel kitchenware that is chip-proof, chip-proofed, stainless, 36 times more durable, or substantially more durable, than ordinary enamelware, and for enamelware that will save fuel. At the time of the hearings in this matter the Committee on Standardization of Tests of Technical Research Service of the Porcelain Enamel Institute had arrived at a tentative test for stainless enamel kitchenware, and that test requires that enamel kitchenware represented as stainless shall pass a test of boiling a 1½% citric acid solution plus a 1½% malic acid solution for one-half hour in the utensil tested and that the utensil should then not show any visible signs of etching or stain. Respondent's enamelware products as constituted at the date of the hearings in this case will not withstand the aforementioned test without showing signs of etching or stain.

PAR. 7. The representations of respondent as hereinbefore set forth, in describing and advertising its enamelware and enamel kitchenware, are false and misleading, and have the capacity and tendency to deceive, and have deceived, and do deceive retailers and the purchasing public into buying respondent's products, on account of the mistaken beliefs herein set out. Through its advertising and aforesaid representations respondent has placed, and is placing, in the hands of wholesalers and retailers the means of deceiving the ultimate purchasers. The aforesaid acts and practices have the capacity and tendency to, and did, and do unfairly divert trade to respondent from respondent's competitors who are likewise engaged in selling in commerce among and between the various States of the United States and the District of Columbia, products of the same kind and nature as those of respondent's, which products are truthfully advertised.

CONCLUSION

The aforesaid acts and practices of the respondent, Federal Enameling and Stamping Company, are to the prejudice of the public and of respondent's competitors and constitute unfair methods of com-

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Order

petition 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 respondent, testimony and other evidence taken before John W. Addison, 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 by Floyd O. Collins, counsel for the Commission, and by William H. Parmelee, counsel for respondent, 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, Federal Enameling and Stamping Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of enamelware or enamel kitchenware in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that said enamelware will not chip;
2. Representing that said enamelware is 36 times more durable or to any substantial degree more durable than ordinary enamelware;
3. Representing that said enamelware products will save their cost to the ultimate purchaser in one year or less through fuel savings or will save the user any material amount on fuel cost;
4. Using the word "stainless," or any word of similar import and meaning, as a brand, stamp, or label upon or for enamelware or enamel kitchenware, or in advertising the same unless such enamelware or enamel kitchenware is made of material which can successfully withstand the test of boiling in it as a container a solution of 1½% citric acid plus 1½% malic acid for a period of one-half hour without showing visible signs of etching or stain.

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.

IN THE MATTER OF
NEW YORK STATE SHEET METAL ROOFING AND AIR-
CONDITIONING CONTRACTORS' ASSOCIATION, ET AL.

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

Docket 2931. Complaint, Sept. 28, 1936—Decision, Oct. 4, 1937

Where a corporate trade association or organization, membership of which consisted of plumbing contractors and dealers in sheet metal roofing supplies and hot air furnaces, with respective places of business at various points in New York State, and in competition with one another and other plumbing contractors and dealers in such products located in other States and members therein of similar trade associations; and corporate manufacturer of hot air furnaces engaged in sale and distribution of its products in interstate commerce to customers located in States other than that of said manufacturer, and in substantial competition with others likewise engaged in business of making, selling, and distributing such furnaces in interstate commerce, and, but for the matters and things below set forth, naturally and normally in competition with other manufacturers who normally also sell not only to contractors and dealers comprising membership of various trade organizations above described, but to certain large mail order houses—

Entered into and engaged in carrying out an agreement and understanding among themselves to list those manufacturers who were thus selling their hot air furnaces to mail order houses aforesaid, and to urge members of their above association, and also the other various trade associations and their respective members, to purchase only from manufacturers recommended by them, and in the accomplishment of their aforesaid purposes—

- (a) Held meetings to devise ways of exerting influence or pressure or other means of inducing members of the respective trade associations not to purchase the products of manufacturers named by them as being concerns dealing with mail order houses;
- (b) Printed and published "White Lists" containing names of manufacturers approved by them who were not selling to such houses;
- (c) Used, in concert and agreement among themselves and with others, coercive and concerted action, boycott, threats thereof, and other united action against manufacturers who were selling to such houses; and
- (d) Caused to be published, and distributed, many thousands of pamphlets and bulletins to the various trade associations in the several States and to their respective members, urging latter to discontinue buying products of manufacturers named therein, and said associations to induce their membership to discontinue trading with such manufacturers;

With effect of monopolizing in themselves business of dealing in and distributing such products, unreasonably lessening, eliminating, restraining, stifling, hampering, and suppressing competition in industry concerned, and depriving purchasing and consuming public of advantages in price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair, competition in said trade and industry, and otherwise operating as a restraint upon and a