

Complaint

IN THE MATTER OF

ACME PRODUCTS COMPANY

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

Docket 3204. Complaint, Aug. 16, 1937—Decision, Nov. 4, 1937

Where a corporation engaged in sale and distribution of life preservers to purchasers in other States and in District of Columbia, in substantial competition with those engaged in manufacture, sale and distribution, as aforesaid, of like and similar products, and including therein manufacturers and distributors of such products who truthfully advertise and represent the merit of their respective goods and refrain from advertising or representing that merchandise offered by them has a merit which it does not have, or, falsely, that it has met the requirements of the Steamboat Inspection Service—

Represented, through brand on certain of its said life preservers, "Guaranteed to comply with the Rules and Regulations of the Steamboat Inspection Service; allowing cushions as Life Preservers on Pleasure Boats," that life preservers in question complied with rules and regulations of the United States Steamboat Inspection Service and might lawfully be used as life preservers on pleasure boats, facts being that they did not so comply and might not lawfully be used as such;

With result of misleading a substantial portion of consuming public in the several States and in aforesaid District by inducing them mistakenly and erroneously to believe that its said life preservers were guaranteed as above set forth, and might lawfully be used as hereinbefore stated, and with tendency and capacity to mislead and deceive purchasing public into erroneous and mistaken belief that such statements and representations were true, and with effect of inducing them to buy such preservers of it by reason of such erroneous beliefs, and with result of thereby unfairly diverting trade to it from those competitors similarly engaged who do not make use of similar acts and practices; to the substantial injury of competition in commerce:

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

Mr. S. Brogdyne Tew, II for the Commission.

Woodruff, Klein & White, of New Haven, Conn., 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 Acme Products Company, a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress,

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and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Acme Products Company, is a corporation having its principal office and place of business at 152 Brewery Street, city of New Haven, State of Connecticut. It has been for more than one year last past engaged in the sale and distribution of life preservers.

In the course and conduct of its business respondent, for more than one year last past, offered said products for sale, sold, and sells the same in commerce between the State of Connecticut and the several States of the United States and in the District of Columbia. When said products are sold respondent transports or causes same to be transported from its place of business in the State of Connecticut to purchasers thereof located in States of the United States other than the State of Connecticut and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade and commerce in said products so sold by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now and for more than one year last past has been engaged in substantial competition with other individuals, firms, partnerships, and corporations engaged in the manufacture, sale, and distribution of, or in the sale and distribution of, like and similar products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in soliciting the sale of, and in selling, its products, and for the purpose of creating a demand on the part of the consuming public for said commodities, has advertised its commodities through the media of price lists and other printed matter published and circulated through the United States mails to their customers and prospective customers located in the various States of the United States and in the District of Columbia.

In the aforesaid ways and by the aforesaid means respondent makes and has made to the general public false and misleading statements with reference to the commodities offered for sale by it.

PAR. 4. The said price lists and other printed matter published and distributed by respondent as aforesaid contain misleading descriptions and representations concerning its products. For example, certain of the cushions sold and distributed by it are branded and represented to the purchasing public in the following manner:

Guaranteed to comply with the Rules and Regulations of the Steamboat Inspection Service; allowing cushions as Life Preservers on Pleasure Boats.

The aforementioned branding and representations appearing on the aforesaid articles and their containers serve to lead purchasers and prospective purchasers into the erroneous and mistaken belief that the commodities so branded and represented comply with the rules and regulations of the U. S. Steamboat Inspection Service; that said products meet the requirements of the said Service; and said cushions may be lawfully used as life preservers on boats.

The aforementioned requirements of the U. S. Steamboat Inspection Service are that a life preserver must be capable of sustaining afloat for a continuous period of 24 hours a weight so arranged as to provide a continuous downward gravitation pull of 20 pounds.

PAR. 5. In truth and in fact the aforesaid commodities do not meet the requirements of the U. S. Steamboat Inspection Service and cannot be lawfully used as life preservers on boats. Respondent's life preservers are not capable of sustaining afloat for a continuous period of 24 hours a weight so arranged as to provide a continuous downward gravitation pull of 20 pounds, and may not lawfully be used as life preservers on boats.

PAR. 6. There are among the competitors of the respondent manufacturers and distributors of like and similar products who truthfully advertise and represent the merit of their respective products, and who refrain from advertising or representing that the merchandise offered for sale by them has a merit that it does not have, or that it has met the requirements of the U. S. Steamboat Inspection Service.

PAR. 7. The effect of the foregoing false and misleading representations and acts of respondent in selling and offering for sale such items of merchandise as hereinbefore referred to is to mislead a substantial part of the purchasing and consuming public in the several States of the United States and in the District of Columbia by inducing them to mistakenly believe that the articles hereinabove set out and described in paragraph 1 will meet the requirements of the U. S. Steamboat Inspection Service, and that the said commodities, as a result of meeting the requirements of the said service, may and can be lawfully used as life preservers on boats.

PAR. 8. The aforesaid false and misleading representations and statements on the part of respondent have induced and still induce a substantial number of consumer purchasers of said commodities to buy products offered for sale, sold, and distributed by the respondent on account of the aforesaid erroneous and mistaken belief. As a result thereof trade has been unfairly diverted to respondent from those competitors of respondent engaged in similar businesses referred to in paragraph 6. As a consequence thereof substantial injury has been and is being done by respondent to competition in

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

PAR. 9. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on August 17, 1937, issued and served its complaint in this proceeding upon respondent, Acme Products Company, 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, a stipulation as to the facts was entered into between W. T. Kelley, Chief Counsel of the Commission, and Woodruff, Klein and White, counsel for respondent, which said stipulation was thereafter approved by the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, and the stipulation as to the facts (respondent having waived the filing of a brief); 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, Acme Products Company, is a corporation having its principal office and place of business at 152 Brewery Street, city of New Haven, State of Connecticut.

PAR. 2. The respondent has been for more than one year last past engaged in the business of selling and distributing life preservers.

PAR. 3. In the sale of said products respondent has transported or caused the same to be transported from its principal place of business in the State of Connecticut to purchasers thereof located

in States of the United States other than the State from which shipment originated, and in the District of Columbia.

There has been for more than one year last past, and there still is, a constant current of trade and commerce in said life preservers so sold and distributed by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 4. For more than one year last past the respondent has been engaged in substantial competition with other individuals, partnerships, and corporations engaged in the manufacture, sale, and distribution of like and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its business the respondent, in soliciting the sale of, and in selling, its products, and for the purpose of creating a demand on the part of the consuming public for said products, has for more than one year last past caused its products to be advertised through the media of price lists and other printed matter published and circulated through the United States mails to their customers and prospective customers located in the various States of the United States and in the District of Columbia.

In the aforesaid ways and by the aforesaid means the respondent makes, and has made, to the general public false and misleading statements with reference to the commodities offered for sale by it. The price lists and other printed matter published and distributed by respondent, and hereinbefore referred to, contain misleading descriptions and representations concerning its products. Certain of the life preservers sold and distributed by it are branded and represented to the purchasing public in the following manner:

Guaranteed to comply with the Rules and Regulations of the Steamboat Inspection Service; allowing cushions as Life Preservers on Pleasure Boats.

The branding and representations above set out and appearing on respondent's articles and their containers serve to lead customers and prospective customers into the erroneous and mistaken belief that the commodities so branded and represented comply with the rules and regulations of the U. S. Steamboat Inspection Service; that the products meet the requirements of the Steamboat Inspection Service, and further that the products may be lawfully used as life preservers on boats.

The requirements of the U. S. Steamboat Inspection Service are that a life preserver must be capable of sustaining afloat for a continuous period of 24 hours a weight so arranged as to provide a continuous downward gravitation pull of 20 pounds.

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PAR. 6. In truth and in fact the respondent's commodities do not meet the requirements of the U. S. Steamboat Inspection Service. The respondent's life preservers are not capable of sustaining afloat for a continuous period of 24 hours a weight so arranged as to provide a continuous downward gravitation pull of 20 pounds, and may not lawfully be used as life preservers on boats.

PAR. 7. There are among the competitors of the respondent manufacturers and distributors of like and similar products who truthfully advertise and represent the merit of their respective products, and who refrain from advertising or representing that the merchandise offered for sale by them has a merit that it does not have, or that it has met the requirements of the U. S. Steamboat Inspection Service when such is not the fact.

PAR. 8. The effect of the foregoing false and misleading representations of the respondent in selling and offering for sale its life preservers is to mislead a substantial portion of the consuming public in the several States of the United States and in the District of Columbia by inducing them to mistakenly and erroneously believe:

(1) That the respondent's life preservers are guaranteed to comply with the rules and regulations of the U. S. Steamboat Inspection Service, and (2) that said life preservers may be lawfully used as life preservers on pleasure boats.

PAR. 9. The use of each and all of the foregoing false and misleading statements and representations as herein set out has had, and now has, a tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and has induced and now induces members of the public to purchase the life preservers of the respondent on account of such erroneous beliefs.

Said representations have thereby unfairly diverted trade to said respondent from those competitors of respondent engaged in similar businesses who do not make use of similar acts and practices, and substantial injury has been 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 Acme Products Company 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

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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, and the stipulation as to the facts entered into between W. T. Kelley, Chief Counsel of the Commission, and Woodruff, Klein and White, 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, Acme Products Company, a corporation, its representatives, agents, and employes, in connection with the offering for sale, sale, and distribution of life preservers in commerce among and between the various States of the United States and in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly, through advertisements, price lists, circulars, labels, containers, or any other form of printed matter, or by radio broadcasting, or in any other manner:

1. That the said life preservers comply with the rules and regulations of the U. S. Steamboat Inspection Service; and

2. That said life preservers may be lawfully used as life preservers on pleasure boats.

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.

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IN THE MATTER OF
THE MASONITE CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2614. Complaint, Nov. 6, 1935—Decision, Nov. 6, 1937

Where a corporation engaged in manufacture of wall board and wall coverings compounded from wood chips and fibers and other substances under a process resulting in a hard durable sheeting or covering upon which were scored or stamped squares resembling, when painted or lacquered by others with different color from remainder of the sheet, mortar lines upon completely installed ceramic surface, and in the sale and distribution, in other States and in the District of Columbia, of such products, in competition, among others, with many engaged in manufacture, sale and transportation, as aforesaid, of tile made from clay and baked in kilns and properly described and designated as such, and with others who make, sell, and distribute wall board and wall coverings and various other products, including copper tile, glass tile, wood tile, rubber tile, cork tile, and the like, properly thus designated and described—

Made use of designation "Temprtile" as designation of its said products in extensively advertising the same, notwithstanding fact its aforesaid board and coverings were not that baked clay or ceramic product connoted by word "tile" standing alone and without qualifying prefix as hereinbefore set forth; with tendency and capacity to mislead and deceive substantial portion of purchasing public, to its damage and injury, into the belief that aforesaid products, thus designated, were made from baked clay, and with tendency to and effect of diverting trade from tile or baked clay products of competitor-manufacturers who make and sell, as aforesaid, tile products:

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

Before *Mr. Charles F. Diggs*, *Mr. John J. Keenan* and *Mr. John L. Hornor*, trial examiners.

Mr. Alden S. Bradley and *Mr. Morton Nesmith* for the Commission.
Dyke & Schaines, of New York City, for respondent.

Hines, Rearick, Dorr & Hammond, of New York City, for Tile Manufacturers' Assn., Inc., amicus curiae.

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 The Masonite Corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce"